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PUBLIC LAW 901--81st Congress

Chapter 1189--2d Session

H. R. 5487

LEGISLATIVE HISTORY

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ADMINISTRATIVE ORDERS. Provides for the review of orders by a court of appeals of the United States of Federal Communications Commission under the Communications Act of 1934, and of orders of the Secretary of Agriculture under the Packers and Stockyards and Perishable Agricultural Commodities Acts.

INDEX AND SUMMARY OF HISTORY ON H. R. 5487

February 21, 1949	H. R. 2915 was introduced by Rep. Hobbs and was referred to the House Committee on the Judiciary. Print of the bill as introduced. Companion bill.
July 5, 1949	H. R. 5487 was introduced by Rep. Hobbs and was referred to the House Comm. on the Judiciary. Print of the bill as introduced.
May 23, 1950	House Committee reported H. R. 5487 with amendments. House Report 2122. Print of the bill as reported.
June 5, 1950	House discussed and passed H. R. 5487 with amendments.
June 6, 1950	Print of H. R. 5487 as referred to the Senate Committee on the Judiciary.
December 11, 1950	Senate Committee reported H. R. 5487 with amendments. Senate Report 2618. Print of the bill as reported.
December 15, 1950	Senate discussed and passed H. R. 5487 as reported.
December 18, 1950	House concurred in the Senate amendments.
December 29, 1950	Approved. Public Law 901.

81ST CONGRESS
1ST SESSION

H. R. 2915

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 21, 1949

Mr. HOBBS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3

DEFINITIONS

4 SECTION 1. As used in this Act—

5 (a) "Court of appeals" means a court of appeals of the
6 United States, and includes the United States Court of Ap-
7 peals for the District of Columbia.

8 (b) "Clerk" means the clerk of the court in which the

1 petition for the review of an order, reviewable under this
2 Act, is filed.

3 (c) "Petitioner" means the party or parties by whom a
4 petition to review an order, reviewable under this Act, is
5 filed.

6 (d) When the order sought to be reviewed was entered
7 by the Federal Communications Commission, "agency"
8 means the Commission; and when such order was entered
9 by the Secretary of Agriculture, "agency" means the
10 Secretary.

11 JURISDICTION

12 SEC. 2. The court of appeals shall have exclusive juris-
13 diction to enjoin, set aside, suspend (in whole or in part),
14 or to determine the validity of, all final orders (a) of the
15 Federal Communications Commission made under the Com-
16 munications Act of 1934, as amended, and (b) of the Sec-
17 retary of Agriculture made under the Packers and Stock-
18 yards Act, 1921, as amended, and under the Perishable
19 Agricultural Commodities Act, 1930, as amended, except
20 orders issued under section 309 (e) and 317 of the Packers
21 and Stockyards Act and section 7 (a) of the Perishable
22 Agricultural Commodities Act.

23 Such jurisdiction shall be invoked by the filing of a peti-
24 tion as provided in section 4 hereof.

VENUE

SEC. 3. The venue of any proceeding under this Act shall be in the judicial circuit wherein is the residence of the party or any of the parties filing the petition for review, or wherein such party or any of such parties has its principal office, or in the United States Court of Appeals for the District of Columbia.

REVIEW OF ORDERS

SEC. 4. Any party aggrieved by a final order reviewable under this Act may, within sixty days after entry of such order, file in the court of appeals, wherein the venue as prescribed by section 3 hereof lies, a petition to review such order. Upon the entry of such an order, notice thereof shall be given promptly by the agency by service or publication in accordance with the rules of such agency. The action in court shall be brought against the United States. The petition shall contain a concise statement of (a) the nature of the proceedings as to which review is sought, (b) the facts upon which venue is based, (c) the grounds on which relief is sought, and (d) the relief prayed. The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition upon the agency and upon the Attorney General of the United States by mailing by regis-

1 tered mail, with request for return receipt, a true copy to
2 the agency and a true copy to the Attorney General.

3 PREHEARING CONFERENCE

4 SEC. 5. The court of appeals may hold a prehearing
5 conference or direct a judge of such court to hold a pre-
6 hearing conference.

7 RECORD TO BE CERTIFIED

8 SEC. 6. Within the time prescribed by, and in accord-
9 ance with the requirements of, rules promulgated by the
10 court of appeals in which the proceeding is pending, unless
11 the proceeding has been terminated on a motion to dismiss
12 the petition, the agency shall file in the office of the clerk
13 the record on review, duly certified, consisting of the plead-
14 ings, evidence, and proceedings before the agency, or such
15 portions thereof as such rules shall require to be included in
16 such record, or such portions thereof as the petitioner and
17 the agency, with the approval of the court of appeals, shall
18 agree upon in writing.

19 PETITIONS HEARD ON RECORD BEFORE RESPONDENT

20 SEC. 7. (a) Petitions to review orders reviewable under
21 this Act, unless determined on a motion to dismiss the peti-
22 tion, shall be heard in the court of appeals upon the record
23 of the pleadings, evidence adduced, and proceedings before
24 the agency where the agency has in fact held a hearing
25 whether or not required to do so by law.

PROCEDURE WHERE NO HEARING HELD

(b) Where the agency has held no hearing prior to the taking of the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After such determination, the court shall (1) where a hearing is required by law, remand the proceedings to the agency for the purpose of holding a hearing; (2) where a hearing is not required by law, pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; and (3) where a hearing is not required by law, and a genuine issue of material fact is presented, transfer the proceedings to a United States district court for the district where the petitioner or any petitioner resides or has its principal office for hearing and determination as if such proceedings were originally initiated in the district court. The procedure in such cases in the United States district courts shall be governed by the Federal Rules of Civil Procedure.

ADDITIONAL EVIDENCE

(c) If a party to a proceeding to review shall apply to the court of appeals, in which the proceeding is pending, for leave to adduce additional evidence and shall show to the satisfaction of such court (1) that such additional evidence

1 is material, and (2) that there were reasonable grounds for
 2 failure to adduce such evidence before the agency, such court
 3 may order such additional evidence and any counter
 4 evidence the opposite party desires to offer to be taken by the
 5 agency. The agency may modify its findings of fact, or
 6 make new findings, by reason of the additional evidence so
 7 taken and may modify or set aside its order and shall file
 8 a certified transcript of such additional evidence, such modi-
 9 fied findings or new findings, and such modified order or the
 10 order setting aside the original order.

11 SCOPE OF REVIEW

12 (d) The findings of the agency as to the facts, if sup-
 13 ported by substantial evidence, shall be conclusive. No
 14 objection to the order of the agency shall be considered by
 15 the court unless such objection shall have been urged before
 16 the agency or unless there were reasonable grounds for failure
 17 to do so.

18 REPRESENTATION IN PROCEEDING—INTERVENTION

19 SEC. 8. The Attorney General shall be responsible for
 20 and have charge and control of the interests of the Govern-
 21 ment in all court proceedings authorized by this Act. The
 22 agency, and any party or parties in interest in the proceed-
 23 ing before the agency whose interests will be affected if an
 24 order of the agency is or is not enjoined, set aside, or sus-

1 pending, may intervene as of right and be represented by
 2 counsel in any proceeding to review such order. Communi-
 3 ties, associations, corporations, firms, and individuals, whose
 4 interests are affected by the agency's order, may intervene in
 5 any proceeding to review such order. The Attorney Gen-
 6 eral shall not dispose of or discontinue said proceeding to
 7 review over the objection of such party or intervenors afore-
 8 said, but said intervenor or intervenors may prosecute, de-
 9 fend, or continue said proceeding unaffected by the action
 10 or nonaction of the Attorney General therein.

11 JURISDICTION OF PROCEEDING

12 SEC. 9. (a) Upon the filing and service of a petition
 13 to review, the court of appeals shall have jurisdiction of the
 14 proceeding. The court of appeals in which the record on
 15 review is filed, on such filing, shall have jurisdiction to vacate
 16 stay orders or interlocutory injunctions theretofore granted
 17 by any court, and shall have exclusive jurisdiction to make
 18 and enter, upon the petition, evidence, and proceedings set
 19 forth in the record on review, a judgment determining the
 20 validity of, and enjoining, setting aside, or suspending, in
 21 whole or in part, the order of the agency.

22 STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY

23 INJUNCTIONS

24 (b) The filing of the petition to review shall not of
 25 itself stay or suspend the operation of the order of the agency,

1 but the court of appeals in its discretion may restrain or
2 suspend, in whole or in part, the operation of the order
3 pending the final hearing and determination of the petition.
4 Where the petitioner makes application for an interlocu-
5 tory injunction suspending or restraining the enforcement,
6 operation, or execution of, or setting aside, in whole or in
7 part, any order reviewable under this Act, at least five days'
8 notice of the hearing thereon shall be given to the agency
9 and to the Attorney General of the United States. In
10 cases where irreparable damage would otherwise ensue to
11 the petitioner, the court of appeals may, on hearing, after
12 not less than five days' notice to the agency and to the
13 Attorney General, order a temporary stay or suspension,
14 in whole or in part, of the operation of the order of the
15 agency for not more than sixty days from the date of such
16 order pending the hearing on the application for such inter-
17 locutory injunction, in which case such order of the court
18 of appeals shall contain a specific finding, based on evi-
19 dence submitted to the court of appeals, and identified by
20 reference thereto, that such irreparable damage would result
21 to petitioner and specifying the nature of such damage.
22 The court of appeals, at the time of hearing the applica-
23 tion for an interlocutory injunction, upon a like finding,
24 may continue the temporary stay or suspension, in whole
25 or in part, until decision on the application.

1 The hearing upon such an application for an interlocu-
2 tory injunction shall be given preference and expedited and
3 shall be heard at the earliest practicable date after the ex-
4 piration of the notice of hearing on the application pro-
5 vided for above.

6 Upon the final hearing of any proceeding to review any
7 order under this Act, the same requirements as to precedence
8 and expedition shall apply.

9 REVIEW IN THE SUPREME COURT ON CERTIORARI OR
10 CERTIFICATION

11 SEC. 10. An order granting or denying an interlocu-
12 tory injunction under section 9 (b) of this Act shall be
13 subject to review by the Supreme Court of the United States
14 upon writ of certiorari as provided in title 28, United States
15 Code, section 1254 (1) : *Provided*, That application there-
16 for be duly made within thirty days after the entry of such
17 order. The final judgment of the court of appeals in a pro-
18 ceeding to review under this Act shall be subject to review
19 by the Supreme Court of the United States upon a writ of
20 certiorari in accordance with the provisions of title 28,
21 United States Code, section 1254 (1) : *Provided further*,
22 That application therefor be duly made within sixty days
23 after the entry of such judgment. Either the United States
24 or the agency or an aggrieved party may file such petition
25 for a writ of certiorari. The provisions of title 28, United

1 States Code, section 1254 (3), regarding certification, and
2 of title 28, United States Code, section 2101 (e), regard-
3 ing stays, shall also apply to proceedings under this Act.

4 RULES

5 SEC. 11. The several courts of appeals shall adopt and
6 promulgate rules governing the practice and procedure, in-
7 cluding prehearing conference procedure, in proceedings to
8 review orders under this Act: *Provided, however,* That such
9 rules shall be approved by the Judicial Conference of the
10 United States.

11 ENFORCEMENT

12 SEC. 12. The several United States district courts are
13 hereby vested with jurisdiction specifically to enforce, and
14 to enjoin and restrain any person from violating any order
15 heretofore or hereafter issued under section 203 of the
16 Packers and Stockyards Act, 1921 (42 Stat. 161).

17 REPEALS

18 SEC. 13. All laws or parts of laws inconsistent with the
19 provisions of this Act are repealed.

20 EFFECTIVE DATE

21 SEC. 14. This Act shall take effect on the thirtieth day
22 after the date of its approval. However, actions to enjoin,

1 set aside, or suspend orders of the Federal Communications
2 Commission or the Secretary of Agriculture, which are pend-
3 ing when this Act becomes effective, shall not be affected
4 thereby, but shall proceed to final disposition under the
5 existing law.

H. R. 2915

A BILL

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended.

By Mr. HOBBS

FEBRUARY 21, 1949

Referred to the Committee on the Judiciary

H. R. 5487

JULY 5, 1949

A BILL

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

DEFINITIONS

4 SECTION 1. As used in this Act—

5 (a) “Court of appeals” means a court of appeals of
6 the United States.

1 (b) "Clerk" means the clerk of the court in which the
2 petition for the review of an order, reviewable under this
3 Act, is filed.

4 (c) "Petitioner" means the party or parties by whom
5 a petition to review an order, reviewable under this Act, is
6 filed.

7 (d) When the order sought to be reviewed was entered
8 by the Federal Communications Commission, "agency"
9 means the Commission; when such order was entered by the
10 Secretary of Agriculture, "agency" means the Secretary;
11 when such order was entered by the United States Mari-
12 time Commission, "agency" means that Commission.

13 JURISDICTION

14 SEC. 2. The court of appeals shall have exclusive juris-
15 diction to enjoin, set aside, suspend (in whole or in part),
16 or to determine the validity of, all final orders (a) of the
17 Federal Communications Commission made under the Com-
18 munications Act of 1934, as amended, and (b) of the Sec-
19 retary of Agriculture made under the Packers and Stock-
20 yards Act, 1921, as amended, and under the Perishable
21 Agricultural Commodities Act, 1930, as amended, except
22 orders issued under sections 309 (e) and 317 of the Packers
23 and Stockyards Act and section 7 (a) of the Perishable
24 Agricultural Commodities Act, and (c) such final orders
25 of the United States Maritime Commission entered under

1 authority of the Shipping Act, 1916, as amended, and the
2 Intercoastal Shipping Act, 1933, as amended, as are now
3 subject to judicial review pursuant to the provisions of sec-
4 tion 31, Shipping Act, 1916, as amended.

5 Such jurisdiction shall be invoked by the filing of a peti-
6 tion as provided in section 4 hereof.

7 VENUE

8 SEC. 3. The venue of any proceeding under this Act
9 shall be in the judicial circuit wherein is the residence of the
10 party or any of the parties filing the petition for review,
11 or wherein such party or any of such parties has its principal
12 office, or in the United States Court of Appeals for the
13 District of Columbia: *Provided*, That the venue of any pro-
14 ceeding to review orders now reviewable under section 402
15 (b) of the Communications Act of 1934, as amended, shall
16 be in the United States Court of Appeals for the District of
17 Columbia.

18 REVIEW OF ORDERS

19 SEC. 4. Any party aggrieved by a final order review-
20 able under this Act may, within sixty days after entry of
21 such order, file in the court of appeals, wherein the venue
22 as prescribed by section 3 hereof lies, a petition to review
23 such order. Upon the entry of such an order, notice thereof
24 shall be given promptly by the agency by service or publica-
25 tion in accordance with the rules of such agency. The action

1 in court shall be brought against the United States. The
2 petition shall contain a concise statement of (a) the nature
3 of the proceedings as to which review is sought, (b) the
4 facts upon which venue is based, (c) the grounds on which
5 relief is sought, and (d) the relief prayed. The petitioner
6 shall attach to the petition, as exhibits, copies of the order,
7 report, or decision of the agency. The clerk shall serve a
8 true copy of the petition upon the agency and upon the
9 Attorney General of the United States by mailing by regis-
10 tered mail, with request for return receipt, a true copy to the
11 agency and a true copy to the Attorney General.

12 PREHEARING CONFERENCE

13 SEC. 5. The court of appeals may hold a prehearing con-
14 ference or direct a judge of such court to hold a prehearing
15 conference.

16 RECORD TO BE CERTIFIED

17 SEC. 6. Within the time prescribed by, and in accord-
18 ance with the requirements of, rules promulgated by the
19 court of appeals in which the proceeding is pending, unless
20 the proceeding has been terminated on a motion to dismiss
21 the petition, the agency shall file in the office of the clerk
22 the record on review, duly certified, consisting of the plead-
23 ings, evidence, and proceedings before the agency, or such
24 portions thereof as such rules shall require to be included in
25 such record, or such portions thereof as the petitioner and

1 the agency, with the approval of the court of appeals, shall
2 agree upon in writing.

3 PETITIONS HEARD ON RECORD BEFORE RESPONDENT

4 SEC. 7. (a) Petitions to review orders reviewable under
5 this Act, unless determined on a motion to dismiss the peti-
6 tion, shall be heard in the court of appeals upon the record
7 of the pleadings, evidence adduced, and proceedings before
8 the agency where the agency has in fact held a hearing
9 whether or not required to do so by law.

10 PROCEDURE WHERE NO HEARING HELD

11 (b) Where the agency has held no hearing prior to
12 the taking of the action of which review is sought by the
13 petition, the court of appeals shall determine whether a
14 hearing is required by law. After such determination, the
15 court shall (1) where a hearing is required by law, remand
16 the proceedings to the agency for the purpose of holding
17 a hearing; (2) where a hearing is not required by law,
18 pass upon the issues presented when it appears from the
19 pleadings and affidavits filed by the parties that no genuine
20 issue of material fact is presented; and (3) where a hear-
21 ing is not required by law, and a genuine issue of material
22 fact is presented, transfer the proceedings to a United States
23 district court for the district where the petitioner or any
24 petitioner resides or has its principal office for hearing and

1 determination as if such proceedings were originally initi-
2 ated in the district court. The procedure in such cases in
3 the United States district courts shall be governed by the
4 Federal Rules of Civil Procedure.

5 ADDITIONAL EVIDENCE

6 (c) If a party to a proceeding to review shall apply
7 to the court of appeals, in which the proceeding is pending,
8 for leave to adduce additional evidence and shall show to
9 the satisfaction of such court (1) that such additional evi-
10 dence is material, and (2) that there were reasonable
11 grounds for failure to adduce such evidence before the agency,
12 such court may order such additional evidence and any
13 counterevidence the opposite party desires to offer to be
14 taken by the agency. The agency may modify its findings
15 of fact, or make new findings, by reason of the additional
16 evidence so taken and may modify or set aside its order
17 and shall file a certified transcript of such additional evi-
18 dence, such modified findings or new findings, and such
19 modified order or the order setting aside the original order.

20 SCOPE OF REVIEW

21 (d) The findings of the agency as to the facts, if
22 supported by substantial evidence, shall be conclusive. No
23 objection to the order of the agency shall be considered by
24 the court unless such objection shall have been urged before

1 the agency or unless there were reasonable grounds for
2 failure to do so.

3 REPRESENTATION IN PROCEEDING—INTERVENTION

4 SEC. 8. The Attorney General shall be responsible for
5 and have charge and control of the interests of the Govern-
6 ment in all court proceedings authorized by this Act. The
7 agency, and any party or parties in interest in the proceed-
8 ing before the agency whose interests will be affected if an
9 order of the agency is or is not enjoined, set aside, or
10 suspended, may appear as parties thereto of their own
11 motion and as of right, and be represented by counsel in
12 any proceeding to review such order. Communities, asso-
13 ciations, corporations, firms, and individuals, whose interests
14 are affected by the agency's order, may intervene in any
15 proceeding to review such order. The Attorney General
16 shall not dispose of or discontinue said proceeding to review
17 over the objection of such party or intervenors aforesaid,
18 but said intervenor or intervenors may prosecute, defend, or
19 continue said proceeding unaffected by the action or non-
20 action of the Attorney General therein.

21 JURISDICTION OF PROCEEDING

22 SEC. 9. (a) Upon the filing and service of a petition
23 to review, the court of appeals shall have jurisdiction of the
24 proceeding. The court of appeals in which the record on

1 review is filed, on such filing, shall have jurisdiction to vacate
2 stay orders or interlocutory injunctions theretofore granted
3 by any court, and shall have exclusive jurisdiction to make
4 and enter, upon the petition, evidence, and proceedings set
5 forth in the record on review, a judgment determining the
6 validity of, and enjoining, setting aside, or suspending, in
7 whole or in part, the order of the agency.

8 STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY
9 INJUNCTIONS

(b) The filing of the petition to review shall not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. Where the petitioner makes application for an interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this Act, at least five days' notice of the hearing thereon shall be given to the agency and to the Attorney General of the United States. In cases where irreparable damage would otherwise ensue to the petitioner, the court of appeals may, on hearing, after not less than five days' notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than

1 sixty days from the date of such order pending the hearing
2 on the application for such interlocutory injunction, in which
3 case such order of the court of appeals shall contain a specific
4 finding, based on evidence submitted to the court of appeals,
5 and identified by reference thereto, that such irreparable dam-
6 age would result to petitioner and specifying the nature of
7 such damage. The court of appeals, at the time of hearing
8 the application for an interlocutory injunction, upon a like
9 finding, may continue the temporary stay or suspension, in
10 whole or in part, until decision on the application.

11 The hearing upon such an application for an interlocutory
12 injunction shall be given preference and expedited and shall
13 be heard at the earliest practicable date after the expiration
14 of the notice of hearing on the application provided for above.

15 Upon the final hearing of any proceeding to review any
16 order under this Act, the same requirements as to precedence
17 and expedition shall apply.

18 REVIEW IN THE SUPREME COURT ON CERTIORARI OR

19 CERTIFICATION

20 SEC. 10. An order granting or denying an interlocutory
21 injunction under section 9 (b) of this Act shall be subject to
22 review by the Supreme Court of the United States upon writ
23 of ceriorari as provided in title 28, United States Code,
24 section 1254 (1): *Provided*, That application therefor be
25 duly made within thirty days after the entry of such order.

1 The final judgment of the court of appeals in a proceeding
2 to review under this Act shall be subject to review by the
3 Supreme Court of the United States upon a writ of certiorari
4 in accordance with the provisions of title 28, United States
5 Code, section 1254 (1) : *Provided further*, That application
6 therefor be duly made within sixty days after the entry of
7 such judgment. Either the United States or the agency or
8 an aggrieved party may file such petition for a writ of cer-
9 tiorari. The provisions of title 28, United States Code, sec-
10 tion 1254 (3) , regarding certification, and of title 28, United
11 States Code, section 2101 (e) , regarding stays, shall also
12 apply to proceedings under this Act.

13 RULES

14 SEC. 11. The several courts of appeals shall adopt and
15 promulgate rules governing the practice and procedure,
16 including prehearing conference procedure, in proceedings to
17 review orders under this Act: *Provided, however*, That such
18 rules shall be approved by the Judicial Conference of the
19 United States.

20 ENFORCEMENT

21 SEC. 12. The several United States district courts are
22 hereby vested with jurisdiction specifically to enforce, and
23 to enjoin and restrain any person from violating any order
24 heretofore or hereafter issued under section 203 of the
25 Packers and Stockyards Act, 1921 (42 Stat. 161).

REPEALS

1

2 SEC. 13. All laws or parts of laws inconsistent with
3 the provisions of this Act are repealed.

4

EFFECTIVE DATE

5

6 SEC. 14. This Act shall take effect on the thirtieth day
7 after the date of its approval. However, actions to enjoin,
8 set aside, or suspend orders of the Federal Communications
9 Commission or the Secretary of Agriculture, which are
10 pending when this Act becomes effective, shall not be
11 affected thereby, but shall proceed to final disposition under
the existing law.

A BILL

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

By Mr. HOBBS

JULY 5, 1949

Referred to the Committee on the Judiciary

PROVIDING FOR THE REVIEW OF ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION, OF CERTAIN ORDERS OF THE SECRETARY OF AGRICULTURE MADE UNDER THE PACKERS AND STOCKYARDS ACT, AND THE PERISHABLE AGRICULTURAL COMMODITIES ACT, AND OF CERTAIN ORDERS OF THE UNITED STATES MARITIME COMMISSION

MAY 23, 1950.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOBBS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5487]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, having considered the same, report favorably thereon with amendments, and recommend that the bill, as so amended, do pass.

The committee amendments are as follows:

(1) Page 2, line 17, delete "under" and insert "reviewable in accordance with the provisions of section 402 (a) of".

(2) Page 3, lines 13 through 17, delete ": *Provided*, That the venue of any proceeding to review orders now reviewable under section 402 (b) of the Communications Act of 1934, as amended, shall be in the United States Court of Appeals for the District of Columbia." and place a period after the word "Columbia" in line 13.

(3) Page 9, line 25, delete "thirty" and insert "forty-five".

(4) Page 10, line 6, delete "sixty" and insert "ninety".

PURPOSE OF AMENDMENTS

Amendments Nos. 1 and 2 are designed to remove from the scope of the legislation, proceedings for the review of orders of the Federal

Communications Commission relating to the granting or refusing of applications for radio-station-construction permits or radio-station licenses, or for the renewal or modification of existing radio-station licenses, or for the suspension of radio operator's licenses. All of these orders are now reviewable under the Communications Act of 1934, section 402 (b), by the United States Court of Appeals for the District of Columbia, and on certiorari by the Supreme Court of the United States. This existing procedure is said to be satisfactory to litigants and to the Communications Commission and the Department of Justice, and since it does not involve the cumbersome review by three judge district courts with direct appeal to the Supreme Court, which it is the purpose of the bill to cure, it is not germane to the present legislation.

Amendments Nos. 3 and 4 will enlarge the time permitted for the filing of petitions for certiorari to the Supreme Court from judgments of the Courts of Appeals on review of the orders to which the bill relates from 60 to 90 days for final judgments and from 30 to 45 days for interlocutory judgments. The amendment will promote uniformity in this respect by making applicable to these proceedings the time limitations provided for petitions for certiorari generally by section 2101 of title 28 of the United States Code.

HISTORY OF THE LEGISLATION

This bill has its origin in a request made by the late Chief Justice Stone that the Judicial Conference of the United States make a study of the procedure for the review of those administrative agency orders which were at that time subject to the procedural requirements of the Urgent Deficiency Act of 1913 with a view to recommending the enactment of legislation that would eliminate the difficulties that had developed in following that procedure. The provisions of the Urgent Deficiencies Act for review of certain agency orders by special district courts of three judges, with an appeal as of right directly to the Supreme Court, had often not only disrupted the ordinary conduct of litigation by the district courts, by requiring the services of three judges in these cases, when in ordinary litigations only one judge is needed; but, also, as Chief Justice Stone pointed out, it had forced the Supreme Court to review many cases where the questions involved were of only minor importance, but where lengthy records and extreme technicalities had added heavily to the burden of the Court. The Chief Justice suggested that the Supreme Court should be relieved of this unnecessary burden. Accordingly, in 1942, the Judicial Conference established a committee to consider the problem. This committee made a preliminary report to the Judicial Conference in 1943. At that time the committee was enlarged by consolidation with another committee on three-judge-court procedure. The consolidated committee consisted of the following members:

Chief Judge Orie L. Phillips of the Court of Appeals for the Tenth Circuit
of Denver, Colo. (chairman)
Circuit Judge Armistead M. Dobie, of Virginia
Circuit Judge Evan A. Evans, of Wisconsin (now deceased)
Circuit Judge Learned Hand of New York
Circuit Judge Calvert Magruder of Massachusetts
Circuit Judge Albert B. Maris of Philadelphia
Circuit Judge Kimbrough Stone of Missouri
District Judge (now Circuit Judge) Walter C. Lindley of Illinois
Commissioner Clyde B. Aitchison of the Interstate Commerce Commission

For the next 3 years the committee worked steadily on the problem. It sat and collaborated with representatives of the agencies concerned: the Solicitor of the Department of Agriculture, the General Counsel of the Federal Communications Commission, attorneys for the United States Maritime Commission, and the Solicitor General of the United States. It prepared and discussed drafts of bills, and revised them to meet suggestions coming from many sources, including the administrative agencies and practitioners before them. It prepared successive reports with proposals of bills, which in turn were discussed by the Judicial Conference at its annual meetings in 1944, 1945, and 1946.

Finally, in 1946, the Judicial Conference recommended that specified legislation along the lines of its committees' recommendations should be enacted by the Congress. These legislative proposals were introduced as House bills in the Eightieth Congress. They were extensively discussed at hearings before the House Judiciary Committee in that Congress, and favorably reported, with amendments. In the Eighty-first Congress the unenacted parts of the legislation were reintroduced and made the subject of further extensive hearings and deliberations in the judicial conference and the agencies concerned, as well as by the Judiciary Committee. The present bill, with the amendments proposed by your committee, is a carefully considered result of all this study. It is approved by the judiciary, by the agencies concerned, by the Attorney General, and by practitioners and others interested. It is the view of your committee that with this background the legislation is the best solution possible to a most technical and troublesome problem in administrative and judicial procedure.

THE EFFECTS OF THE BILL

At present the method of review of most of the judicially reviewable orders of the agencies involved in the proposed bills (the U. S. Maritime Commission, the Secretary of Agriculture, and the Federal Communications Commission) is prescribed by many provisions scattered throughout different statutes. These provisions have a common feature, that the controversy in relation to the orders complained of is heard and decided *de novo* in a district court. In cases in which the action is brought by the administrative agency the case may usually be heard by a single district judge. But in many types of cases, in which a party affected seeks to restrain or set aside the order of the administrative agency as illegal, the present law requires that it shall be heard in a district court by a panel of three judges, one of whom at least shall be a circuit judge and the others of whom may be district judges. The pattern for this was established by the Urgent Deficiencies Act of 1913, and is continued by the present law (title 28, U. S. C., sec. 2284). In cases under this provision and others adopting the procedure, in which the trial in the district court is by three judges sitting en banc, there is a right of review by appeal to the Supreme Court of the United States.

The pending bill would substitute for the present mode of judicial review of the orders of the agencies to which it applies, a review by the appropriate circuit courts of appeals upon the record made before the administrative agency with further review on certiorari by the

Supreme Court in its discretion, as in most other cases coming from the courts of appeals. This is the pattern established for review of orders of the Federal Trade Commission in 1914 (15 U. S. C. 45c) and followed by other laws since then in relation to many other agencies, including the Securities and Exchange Commission, the Bituminous Coal Commission, and the National Labor Relations Board. It is the more modern method and is generally considered to be the best method for the review of orders of administrative agencies.

The proposed method of review has important advantages in simplicity and expedition over the present method. First, the submission of the cases upon the records made before the administrative agencies will avoid the making of two records, one before the agency and one before the court, and thus going over the same ground twice. Under the Administrative Procedure Act of June 11, 1946, the record before the agencies will be made in such a way that all questions for the determination of the courts on review, and the facts bearing upon them, will be presented and the rights of the parties will be fully protected. The bill has adequate provisions in section 7 (b) and (c) for the taking of evidence either by the agency or in the district court, when for one reason or another that is necessary because a suitable hearing was not held prior to initiation of the proceeding in the court of appeals.

Second, in many cases in which hearing in the district courts by panels of three judges is now required there will be a large saving of judicial time and energy. It is generally recognized that three-judge courts are not well adapted for conducting hearings. The necessity of holding conferences whenever questions arise in the course of the proceedings, as they repeatedly do in relation to such matters as the admissibility of evidence, very much slows the trial. In addition the proceeding takes the time of three judges, whereas one would be sufficient at this preliminary stage of the case. The method of review prescribed by the proposed bill would secure the collaboration of three judges at the stage where it is useful, namely, in the decision without consuming their time unnecessarily in the preceding phases of the case.

Third, the provision for review of the Supreme Court in its discretion upon certiorari, as in the review of other cases from circuit courts of appeals, will save the members of the Supreme Court from wasting their energies on cases which are not important enough to call for their attention, and enable them to concentrate more fully upon cases which require their careful consideration. By allowing certiorari, the Court will still reserve for consideration those cases in relation to administrative agencies where significant constitutional issues or substantial public interests are involved, but it will not any longer be required automatically to hear cases which are not of a nature to merit its consideration.

The mode of judicial review provided in this bill has been evolved from long study and careful consideration by all persons concerned with the difficult questions involved. It represents an important improvement in judicial procedure—one that will make for economy and expedition in the disposition of a considerable class of business of the Federal courts.

81ST CONGRESS
2D SESSION

[Report No. 2122]

JULY 5, 1949

MR. HOBBS introduced the following bill; which was referred to the Committee on the Judiciary

MAY 23, 1950

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 DEFINITIONS

4 SECTION 1. As used in this Act—

1 (a) "Court of appeals" means a court of appeals of
2 the United States.

3 (b) "Clerk" means the clerk of the court in which the
4 petition for the review of an order, reviewable under this
5 Act, is filed.

6 (c) "Petitioner" means the party or parties by whom
7 a petition to review an order, reviewable under this Act, is
8 filed.

9 (d) When the order sought to be reviewed was entered
10 by the Federal Communications Commission, "agency"
11 means the Commission; when such order was entered by the
12 Secretary of Agriculture, "agency" means the Secretary;
13 when such order was entered by the United States Mari-
14 time Commission, "agency" means that Commission.

15 JURISDICTION

16 SEC. 2. The court of appeals shall have exclusive juris-
17 diction to enjoin, set aside, suspend (in whole or in part),
18 or to determine the validity of, all final orders (a) of the
19 Federal Communications Commission made ~~under~~ *review-*
20 *able in accordance with the provisions of section 402 (a) of*
21 *the Communications Act of 1934, as amended, and (b) of*
22 *the Secretary of Agriculture made under the Packers and*
23 *Stockyards Act, 1921, as amended, and under the Perishable*
24 *Agricultural Commodities Act, 1930, as amended, except*
25 *orders issued under sections 309 (e) and 317 of the Packers*

1 and Stockyards Act and section 7 (a) of the Perishable
2 Agricultural Commodities Act, and (c) such final orders
3 of the United States Maritime Commission entered under
4 authority of the Shipping Act, 1916, as amended, and the
5 Intercoastal Shipping Act, 1933, as amended, as are now
6 subject to judicial review pursuant to the provisions of sec-
7 tion 31, Shipping Act, 1916, as amended.

8 Such jurisdiction shall be invoked by the filing of a peti-
9 tion as provided in section 4 hereof.

10 VENUE

11 SEC. 3. The venue of any proceeding under this Act
12 shall be in the judicial circuit wherein is the residence of the
13 party or any of the parties filing the petition for review,
14 or wherein such party or any of such parties has its principal
15 office, or in the United States Court of Appeals for the
16 District of Columbia: ~~Provided, That the venue of any pro-~~
17 ~~ceeding to review orders now reviewable under section 402~~
18 ~~(b) of the Communications Act of 1934, as amended, shall~~
19 ~~be in the United States Court of Appeals for the District of~~
20 ~~Columbia.~~

21 REVIEW OF ORDERS

22 SEC. 4. Any party aggrieved by a final order review-
23 able under this Act may, within sixty days after entry of
24 such order, file in the court of appeals, wherein the venue
25 as prescribed by section 3 hereof lies, a petition to review

1 such order. Upon the entry of such an order, notice thereof
2 shall be given promptly by the agency by service or publica-
3 tion in accordance with the rules of such agency. The action
4 in court shall be brought against the United States. The
5 petition shall contain a concise statement of (a) the nature
6 of the proceedings as to which review is sought, (b) the
7 facts upon which venue is based, (c) the grounds on which
8 relief is sought, and (d) the relief prayed. The petitioner
9 shall attach to the petition, as exhibits, copies of the order,
10 report, or decision of the agency. The clerk shall serve a
11 true copy of the petition upon the agency and upon the
12 Attorney General of the United States by mailing by regis-
13 tered mail, with request for return receipt, a true copy to the
14 agency and a true copy to the Attorney General.

15 PREHEARING CONFERENCE

16 SEC. 5. The court of appeals may hold a prehearing con-
17 ference or direct a judge of such court to hold a prehearing
18 conference.

19 RECORD TO BE CERTIFIED

20 SEC. 6. Within the time prescribed by, and in accord-
21 ance with the requirements of, rules promulgated by the
22 court of appeals in which the proceeding is pending, unless
23 the proceeding has been terminated on a motion to dismiss
24 the petition, the agency shall file in the office of the clerk
25 the record on review, duly certified, consisting of the plead-

1 ings, evidence, and proceedings before the agency, or such
2 portions thereof as such rules shall require to be included in
3 such record, or such portions thereof as the petitioner and
4 the agency, with the approval of the court of appeals, shall
5 agree upon in writing.

6 PETITIONS HEARD ON RECORD BEFORE RESPONDENT

7 SEC. 7. (a) Petitions to review orders reviewable under
8 this Act, unless determined on a motion to dismiss the peti-
9 tion, shall be heard in the court of appeals upon the record
10 of the pleadings, evidence adduced, and proceedings before
11 the agency where the agency has in fact held a hearing
12 whether or not required to do so by law.

13 PROCEDURE WHERE NO HEARING HELD

14 (b) Where the agency has held no hearing prior to
15 the taking of the action of which review is sought by the
16 petition, the court of appeals shall determine whether a
17 hearing is required by law. After such determination, the
18 court shall (1) where a hearing is required by law, remand
19 the proceedings to the agency for the purpose of holding
20 a hearing; (2) where a hearing is not required by law,
21 pass upon the issues presented when it appears from the
22 pleadings and affidavits filed by the parties that no genuine
23 issue of material fact is presented; and (3) where a hear-
24 ing is not required by law, and a genuine issue of material

1 fact is presented, transfer the proceedings to a United States
2 district court for the district where the petitioner or any
3 petitioner resides or has its principal office for hearing and
4 determination as if such proceedings were originally initi-
5 ated in the district court. The procedure in such cases in
6 the United States district courts shall be governed by the
7 Federal Rules of Civil Procedure.

8
9 ADDITIONAL EVIDENCE

9 (c) If a party to a proceeding to review shall apply
10 to the court of appeals, in which the proceeding is pending,
11 for leave to adduce additional evidence and shall show to
12 the satisfaction of such court (1) that such additional evi-
13 dence is material, and (2) that there were reasonable
14 grounds for failure to adduce such evidence before the agency,
15 such court may order such additional evidence and any
16 counterevidence the opposite party desires to offer to be
17 taken by the agency. The agency may modify its findings
18 of fact, or make new findings, by reason of the additional
19 evidence so taken and may modify or set aside its order
20 and shall file a certified transcript of such additional evi-
21 dence, such modified findings or new findings, and such
22 modified order or the order setting aside the original order.

23
24 SCOPE OF REVIEW

24 (d) The findings of the agency as to the facts, if
25 supported by substantial evidence, shall be conclusive. No

1 objection to the order of the agency shall be considered by
2 the court unless such objection shall have been urged before
3 the agency or unless there were reasonable grounds for
4 failure to do so.

5 REPRESENTATION IN PROCEEDING—INTERVENTION

6 SEC. 8. The Attorney General shall be responsible for
7 and have charge and control of the interests of the Govern-
8 ment in all court proceedings authorized by this Act. The
9 agency, and any party or parties in interest in the proceed-
10 ing before the agency whose interests will be affected if an
11 order of the agency is or is not enjoined, set aside, or
12 suspended, may appear as parties thereto of their own
13 motion and as of right, and be represented by counsel in
14 any proceeding to review such order. Communities, asso-
15 ciations, corporations, firms, and individuals, whose interests
16 are affected by the agency's order, may intervene in any
17 proceeding to review such order. The Attorney General
18 shall not dispose of or discontinue said proceeding to review
19 over the objection of such party or intervenors aforesaid,
20 but said intervenor or intervenors may prosecute, defend, or
21 continue said proceeding unaffected by the action or non-
22 action of the Attorney General therein.

23 JURISDICTION OF PROCEEDING

24 SEC. 9. (a) Upon the filing and service of a petition
25 to review, the court of appeals shall have jurisdiction of the

1 proceeding. The court of appeals in which the record on
2 review is filed, on such filing, shall have jurisdiction to vacate
3 stay orders or interlocutory injunctions theretofore granted
4 by any court, and shall have exclusive jurisdiction to make
5 and enter, upon the petition, evidence, and proceedings set
6 forth in the record on review, a judgment determining the
7 validity of, and enjoining, setting aside, or suspending, in
8 whole or in part, the order of the agency.

9 STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY

10 INJUNCTIONS

11 (b) The filing of the petition to review shall not of
12 itself stay or suspend the operation of the order of the agency,
13 but the court of appeals in its discretion may restrain or
14 suspend, in whole or in part, the operation of the order pend-
15 ing the final hearing and determination of the petition.
16 Where the petitioner makes application for an interlocutory
17 injunction suspending or restraining the enforcement, opera-
18 tion, or execution of, or setting aside, in whole or in part,
19 any order reviewable under this Act, at least five days' notice
20 of the hearing thereon shall be given to the agency and to
21 the Attorney General of the United States. In cases where
22 irreparable damage would otherwise ensue to the petitioner,
23 the court of appeals may, on hearing, after not less than
24 five days' notice to the agency and to the Attorney General,
25 order a temporary stay or suspension, in whole or in part,

1 of the operation of the order of the agency for not more than
2 sixty days from the date of such order pending the hearing
3 on the application for such interlocutory injunction, in which
4 case such order of the court of appeals shall contain a specific
5 finding, based on evidence submitted to the court of appeals,
6 and identified by reference thereto, that such irreparable dam-
7 age would result to petitioner and specifying the nature of
8 such damage. The court of appeals, at the time of hearing
9 the application for an interlocutory injunction, upon a like
10 finding, may continue the temporary stay or suspension, in
11 whole or in part, until decision on the application.

12 The hearing upon such an application for an interlocutory
13 injunction shall be given preference and expedited and shall
14 be heard at the earliest practicable date after the expiration
15 of the notice of hearing on the application provided for above.

16 Upon the final hearing of any proceeding to review any
17 order under this Act, the same requirements as to precedence
18 and expedition shall apply.

19 REVIEW IN THE SUPREME COURT ON CERTIORARI OR
20 CERTIFICATION

21 SEC. 10. An order granting or denying an interlocutory
22 injunction under section 9 (b) of this Act shall be subject to
23 review by the Supreme Court of the United States upon writ
24 of certiorari as provided in title 28, United States Code,
25 section 1254 (1) : *Provided*, That application therefor be

1 duly made within ~~thirty~~ *forty-five* days after the entry of such
2 order. The final judgment of the court of appeals in a pro-
3 ceeding to review under this Act shall be subject to review by
4 the Supreme Court of the United States upon a writ of cer-
5 tiorari in accordance with the provisions of title 28, United
6 States Code, section 1254 (1) : *Provided further*, That
7 application therefor be duly made within ~~sixty~~ *ninety* days
8 after the entry of such judgment. Either the United States
9 or the agency or an aggrieved party may file such petition
10 for a writ of certiorari. The provisions of title 28, United
11 States Code, section 1254 (3), regarding certification, and
12 of title 28, United States Code, section 2101 (e), regarding
13 stays, shall also apply to proceedings under this Act.

14

RULES

15 SEC. 11. The several courts of appeals shall adopt and
16 promulgate rules governing the practice and procedure,
17 including prehearing conference procedure, in proceedings to
18 review orders under this Act: *Provided, however*, That such
19 rules shall be approved by the Judicial Conference of the
20 United States.

21

ENFORCEMENT

22

23 SEC. 12. The several United States district courts are
24 hereby vested with jurisdiction specifically to enforce, and
to enjoin and restrain any person from violating any order

1 heretofore or hereafter issued under section 203 of the
2 Packers and Stockyards Act, 1921 (42 Stat. 161).

3 REPEALS

4 SEC. 13. All laws or parts of laws inconsistent with
5 the provisions of this Act are repealed.

6 EFFECTIVE DATE

7 SEC. 14. This Act shall take effect on the thirtieth day
8 after the date of its approval. However, actions to enjoin,
9 set aside, or suspend orders of the Federal Communications
10 Commission or the Secretary of Agriculture, which are
11 pending when this Act becomes effective, shall not be
12 affected thereby, but shall proceed to final disposition under
13 the existing law.

A BILL

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

By Mr. HOBBS

JULY 5, 1949

Referred to the Committee on the Judiciary

MAY 23, 1950

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed



titled under existing law to share in the funds of such nation, or to their lawful heirs or devisees determined in the manner prescribed in section 4 of the contract ratified by the act of June 24, 1948 (Public Law 754, 80th Cong.), any or all the funds appropriated pursuant to section 1 of this act.

SEC. 4. There is hereby authorized to be appropriated out of any funds in the Treasury of the United States not otherwise appropriated, the sum of not to exceed \$20,000 for the purpose of defraying the expenses of conducting the referendum provided for in section 1 of this act, and of making the per capita payments authorized in section 3 of this act.

With the following committee amendments:

Page 2, lines 15 to 17, strike the words "a majority of the enrolled members of the Choctaw Nation approving of such commutation" and insert in lieu thereof the following: "the approval of such commutation by a majority of the votes cast by the enrolled members of the Choctaw Nation."

Page 3, line 8, strike the figure "1" and insert in lieu thereof the figure "2."

Page 3, line 6, strike the figure "\$20,000" and insert in lieu thereof the figure "\$5,000."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

(Mr. ALBERT asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. ALBERT. Mr. Speaker, I desire to say first of all that I am pleased, indeed, over the action which the House has just taken in unanimously passing H. R. 6209, a bill which I had the honor of introducing. I desire next to pay tribute to the gentleman from Oklahoma [Mr. STIGLER], who was joint author of this proposal. The gentleman from Oklahoma [Mr. STIGLER] introduced an identical bill, H. R. 6189. No Member from Oklahoma is better informed on the problems of Oklahoma Indians, and particularly the Indians of the Five Civilized Tribes, than my colleague. He did a large amount of spade work leading up to final action on this measure by this House. I am sure that the Choctaw Indians of Oklahoma, most of whom live in my congressional district, join me in this expression of gratitude to Mr. STIGLER.

I also desire to pay a word of tribute to my colleague the gentleman from Oklahoma [Mr. MORRIS], who was chairman of the subcommittee which reported this bill. The painstaking attention which the gentleman from Oklahoma [Mr. MORRIS] gave to this matter and the expeditious but thorough manner in which his committee processed this bill are commendable, indeed.

Thirdly, I desire to explain briefly the provisions of this bill. It provides for the capitalization of certain annual payments now made to the Choctaw Tribe by the Government under various old treaties. These payments amount to \$10,520 per year. This bill is in the nature of an offer by the Government to commute these old annuities to the lump sum of \$350,666.67, to be distributed per capita to the members of the tribe subject to a vote by the living enrolled members as to whether or not they desire to

capitalize these treaty payments. This is an authorization bill, and if the members of the tribe take favorable action on it, it will necessarily have to be followed by an appropriation.

This bill is not a grant. It is simply the settlement of certain standing obligations. If enacted, it will eliminate the burdensome procedure now used in making the annual appropriation to \$10,520. This amount is so small that it is of little benefit to the members of the tribe at the present time. The commutation is based upon the practices used by governmental agencies as well as commercial concerns, and is believed to be fair both to the Indians and to the Government.

(Mr. STIGLER (at the request of Mr. ALBERT) was given permission to extend his remarks at this point in the RECORD.)

[Mr. STIGLER addressed the House. His remarks will appear hereafter in the Appendix.]

RED LAKE BAND OF CHIPPEWA INDIANS

The Clerk called the bill (H. R. 6319) to authorize a \$100 per capita payment to members of the Red Lake Band of Chippewa Indians, from the proceeds of the sale of timber and lumber on the Red Lake Reservation.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior is authorized to withdraw as much as may be necessary from the fund on deposit in the Treasury of the United States arising from the proceeds of the sale of timber and lumber within the Red Lake Reservation in Minnesota, according to the provisions of the act of May 18, 1916 (39 Stat. 137), to the credit of the Red Lake Indians in Minnesota, and to pay therefrom \$100, in two equal installments to each member of the Red Lake Band of Chippewa Indians of Minnesota who is living at the date of enactment of this act. The first installment of \$50 per capita to be made January 15, 1950, and the second installment of \$50 per capita to be made January 15, 1951. Such installment payments shall be made under such rules and regulations as the Secretary of the Interior may prescribe.

SEC. 2. No money paid to Indians under this act shall be subject to any lien or claim of attorneys or other persons. Before any payment is made under this act, the Red Lake Band of Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify and accept the provisions of this act.

SEC. 3. Payments made under this act shall not be held to be "other income and resources" as that term is used in sections 2 (a) (7), 402 (a) (7), and 1002 (a) (8) of the Social Security Act, as amended (U. S. C. 1946 edition, title 42, secs. 302 (a) (7), 602 (a) (7), and 1202 (a) (8)).

With the following committee amendment:

Page 2, line 4, strike out "January 15, 1950," and insert in lieu thereof "upon the passage and approval of this act."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PLAQUE IN CARLSBAD CAVERNS HONORING JIM WHITE

The Clerk called the bill (S. 1959) to commemorate Jim White and his con-

tribution to the early history of Carlsbad Caverns, in the State of New Mexico, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That, for the purpose of commemorating the contribution of Jim White to the early history and public knowledge of Carlsbad Caverns, the Secretary of the Interior is authorized to erect a plaque or marker with an appropriate inscription thereon within Carlsbad Caverns National Park. Such plaque or marker shall be erected near the elevator in the elevator building in the park.

SEC. 2. There is authorized to be appropriated for the purposes of this act not to exceed \$200.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DE SOTO NATIONAL MEMORIAL, FLORIDA

The Clerk called the bill (H. R. 8230) to amend the act of March 11, 1948 (62 Stat. 78) relating to the establishment of the De Soto National Memorial, in the State of Florida.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That section 3 of the act of March 11, 1948 (62 Stat. 78), relating to the establishment of the De Soto National Memorial, Florida, is hereby amended to read as follow:

"SEC. 3. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this act."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MULTIPURPOSE TUNNEL THROUGH THE LAGUNA MOUNTAINS IN SAN DIEGO COUNTY, CALIF.

The Clerk called the bill (H. R. 6339) to authorize a survey to determine the feasibility and advisability of constructing a multipurpose tunnel through the Laguna Mountains in San Diego County, Calif.

Mr. BYRNES of Wisconsin. Mr. Speaker, reserving the right to object, can a member of the committee answer a question or two on this particular bill? In the first place, I am wondering who would construct this highway, railway, and aqueduct tunnel in the event the survey revealed that it is a feasible project.

Mr. DAVIS of Tennessee. That would be determined later.

Mr. BYRNES of Wisconsin. What bothers me is this: Are we to understand this would be a project which would be appropriate for the Army engineers or the United States Government to undertake?

Mr. DAVIS of Tennessee. It would be expected that the Army engineers would enter into the survey to determine whether or not it should be done. They have a very serious water situation out in San Diego, as the gentleman possibly knows, and this would cut off a great many miles of very, very difficult terrain. But the chief object of the bill is to provide more water for San Diego. They really are in a very desperate situation out there.

Mr. BYRNES of Wisconsin. I appreciate the responsibility of the Corps of Engineers and of the United States Government in relation to rivers and harbors and flood control, and so forth; but I am wondering what the responsibility of the Federal Government is as far as constructing a general highway, or railroad, or aqueduct tunnel; and if we do not have basic responsibility to furnish this service I wonder why we have the responsibility of making the surveys to determine feasibility. That is the question that is bothering me in this instance. If the gentleman could tell me what our end responsibility is I think he might be able to relieve my mind somewhat on the situation.

Mr. DAVIS of Tennessee. I am going to ask the chairman of our committee to answer that in more detail for the gentleman.

Mr. WHITTINGTON. The gentleman's inquiry may be answered by the report of the committee. The bill was amended so that the chief of engineers would consult the Bureau of Reclamation, the Department of the Interior, the Bureau of Public Roads, Department of Commerce, and the other governmental agencies. The matter of an aqueduct to divert the waters of a river like the Colorado would be a matter which would concern the Chief of Engineers and the Corps of Engineers.

This is a preliminary examination. It might have been made by other agencies. It might have been made by the Commissioner of Public Roads. However, this bill provides for the examination in coordination with all of the departments to be made by the Chief of Engineers. It involves a multiple-purpose tunnel. It includes transportation, it includes water supply which the gentleman from Tennessee [Mr. DAVIS] referred to, and sets no precedent. It does not provide for any project at all. That matter will be determined later when the report comes in.

Mr. BYRNES of Wisconsin. Are these public lands over which the highway, railway, and water aqueduct would run? Is that the reason for the Federal Government's interest in the area?

Mr. WHITTINGTON. The interest of the Federal Government in the proposal is a public interest. Here is a city, San Diego, between the mountains and the sea. We are interested in diversion of the waters of the Colorado River. They have to come through the metropolitan district of Los Angeles now. It is in the public interest. In the event of war these people might be cut off. The United States Government is profoundly interested and by way of further explanation I may say that the Navy Department down there has an installation that costs a great deal. The United States participated in the provision for water being diverted from the metropolitan area there at a cost of several million dollars.

Mr. BYRNES of Wisconsin. I cannot help but feel that unless there is ample justification for Federal interest in this particular survey there can be no justification for the Federal Government going in there and spending \$50,000 for a

preliminary survey to find out whether it should make a further survey which will cost \$575,000. I do not believe the gentleman has satisfied me that once that survey is completed and it is found feasible the Federal Government should go in and do the work.

Mr. CRAWFORD. Mr. Speaker, will the gentleman yield?

Mr. BYRNES of Wisconsin. I yield to the gentleman from Michigan.

Mr. CRAWFORD. It was my privilege to spend practically all of week before last surveying this very territory. The good people of the metropolitan districts of southern California, which include Los Angeles and San Francisco and towns in between, have put upon themselves a debt of about \$325,000,000 to build a certain water system, including a great aqueduct 16 feet in diameter that runs from the Colorado River across the mountains approximately 450 miles to furnish water to San Diego, Los Angeles, and other cities in that area. That aqueduct is being used perhaps at 6 or 7 percent of its capacity at the present time. The project has proven to be very successful.

In addition to that, when the Second World War developed the Navy, performing great operations at San Diego, built a canal off of this aqueduct distribution into San Diego, which has been taken over by the metropolitan water districts of southern California and it is now serving those areas.

In addition you have the Alamo Canal, you have the great canal system supplying water to the Imperial Valley, you have the water system supplying water to the Coachella Valley—

Mr. BYRNES of Wisconsin. Mr. Speaker, if the gentleman will yield right there, those are all State projects or local projects, so to speak, are they not?

Mr. CRAWFORD. Those are State and Federal. For instance, this canal system ties into the Imperial Dam, the Parker Dam, the Hoover Dam, the new dam which is now being built, on which the bill just previously dealt with here, had to do with the changing of name of the great lake to be formed, and I join with the gentleman from Wisconsin insofar as the aqueduct provisions in this bill are concerned. If it is the desire to change the Federal highway down there and to make some surveys with reference to changing that, there might be something to it; I am not familiar with this bill, but I do not understand just why the provisions which refer to the aqueduct, with respect to the San Diego Harbor, are tied into this because, let me repeat now, you have an aqueduct running from the Colorado River across the mountains, approximately 450 miles long, 16 feet in diameter, which is running at a very, very small percentage of its capacity at the present time, because the water is not now called for. That additional capacity will be used in the years to come by installing certain additional pumping capacity. Now, just why you need an additional aqueduct in connection with this bill, I do not know, unless it be that if you are building a road through the mountains, you can

prepare an aqueduct for some great use in the future which would save you money by reason of the savings in connection with it being installed at the time the road is built. The gentleman may have some information he could give us on that.

Mr. WHITTINGTON. I may say that according to the testimony developed before the committee and according to the report here that this is a multiple purpose tunnel. It would cover highways, it would cover railways, it will provide for any aqueduct that may be needed. The testimony indicated on this resolution as amended that provides for a preliminary examination, that in addition to the large amount of money that the Federal Government spent many millions of dollars—I do not undertake to quote the figure exactly—but as a matter of national defense the Federal Government contributed largely to the provision for the water for the metropolitan district out of the Colorado River, and it was indicated in the reports that the provision now made was inadequate and that a survey might better determine whether or not an aqueduct would be better than to enlarge those facilities. So, on the whole therefore, with the report from the Department of National Defense recommending this survey, with a report from the Director of the Budget, with a report from the Department of the Interior, with a report from the Department of Commerce, having jurisdiction over the matter of highways, having jurisdiction over the matter of the water supply that has already been installed there, and the future needs that may be required, it was felt in all the circumstances that a preliminary examination should be made, and the bill was so amended. So, in all the circumstances, in view of the fact that we have this vast metropolitan area between the mountains and the sea, that additional provisions would have to be made for water, and that a tunnel there that would provide for better transportation we felt that that matter might well be explored, as it relates to highways, railways, and aqueducts.

Mr. BYRNES of Wisconsin. Mr. Speaker, I appreciate the gentleman's explanation. However, there are still some questions in my mind, and under the circumstances I ask unanimous consent, Mr. Speaker, that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION

The Clerk called the bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc.—

DEFINITIONS

SECTION 1. As used in this act—

(a) "Court of appeals" means a court of appeals of the United States.

(b) "Clerk" means the clerk of the court in which the petition for the review of an order, reviewable under this act, is filed.

(c) "Petitioner" means the party or parties by whom a petition to review an order, reviewable under this act, is filed.

(d) When the order sought to be reviewed was entered by the Federal Communications Commission, "agency" means the Commission; when such order was entered by the Secretary of Agriculture, "agency" means the Secretary; when such order was entered by the United States Maritime Commission, "agency" means that Commission.

JURISDICTION

SEC. 2. The court of appeals shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of, all final orders (a) of the Federal Communications Commission made under the Communications Act of 1934, as amended, and (b) of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and under the Perishable Agricultural Commodities Act, 1930, as amended, except orders issued under sections 309 (e) and 317 of the Packers and Stockyards Act and section 7 (a) of the Perishable Agricultural Commodities Act, and (c) such final orders of the United States Maritime Commission entered under authority of the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, as are now subject to judicial review pursuant to the provisions of section 31, Shipping Act, 1916, as amended.

Such jurisdiction shall be invoked by the filing of a petition as provided in section 4 hereof.

VENUE

SEC. 3. The venue of any proceeding under this act shall be in the judicial circuit wherein is the residence of the party or any of the parties filing the petition for review, or wherein such party or any of such parties has its principal office, or in the United States Court of Appeals for the District of Columbia: *Provided*, That the venue of any proceeding to review orders now reviewable under section 402 (b) of the Communications Act of 1934, as amended, shall be in the United States Court of Appeals for the District of Columbia.

REVIEW OF ORDERS

SEC. 4. Any party aggrieved by a final order reviewable under this act may, within 60 days after entry of such order, file in the court of appeals, wherein the venue as prescribed by section 3 hereof lies, a petition to review such order. Upon the entry of such an order, notice thereof shall be given promptly by the agency by service or publication in accordance with the rules of such agency. The action in court shall be brought against the United States. The petition shall contain a concise statement of (a) the nature of the proceedings as to which review is sought, (b) the facts upon which venue is based, (c) the grounds on which relief is sought, and (d) the relief prayed. The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition upon the agency and upon the Attorney General of the United States by mailing by registered mail, with request for return receipt, a true copy to the agency and a true copy to the Attorney General.

PREHEARING CONFERENCE

SEC. 5. The court of appeals may hold a prehearing conference or direct a judge of such court to hold a prehearing conference.

RECORD TO BE CERTIFIED

SEC. 6. Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review, duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing.

PETITIONS HEARD ON RECORD BEFORE RESPONDENT

SEC. 7. (a) Petitions to review orders reviewable under this act, unless determined on a motion to dismiss the petition, shall be heard in the court of appeals upon the record of the pleadings, evidence adduced, and proceedings before the agency where the agency has in fact held a hearing whether or not required to do so by law.

PROCEDURE WHERE NO HEARING HELD

(b) Where the agency has held no hearing prior to the taking of the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After such determination, the court shall (1) where a hearing is required by law, remand the proceedings to the agency for the purpose of holding a hearing; (2) where a hearing is not required by law, pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; and (3) where a hearing is not required by law, and a genuine issue of material fact is presented, transfer the proceedings to a United States district court for the district where the petitioner or any petitioner resides or has its principal office for hearing and determination as if such proceedings were originally initiated in the district court. The procedure in such cases in the United States district courts shall be governed by the Federal Rules of Civil Procedure.

ADDITIONAL EVIDENCE

(c) If a party to a proceeding to review shall apply to the court of appeals, in which the proceeding is pending, for leave to adduce additional evidence and shall show to the satisfaction of such court (1) that such additional evidence is material, and (2) that there were reasonable grounds for failure to adduce such evidence before the agency, such court may order such additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file a certified transcript of such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order.

SCOPE OF REVIEW

(d) The findings of the agency as to the facts, if supported by substantial evidence, shall be conclusive. No objection to the order of the agency shall be considered by the court unless such objection shall have been urged before the agency or unless there were reasonable grounds for failure to do so.

REPRESENTATION IN PROCEEDING—INTERVENTION

SEC. 8. The Attorney General shall be responsible for and have charge and control of the interests of the Government in all court proceedings authorized by this act. The agency, and any party or parties in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto for their own motion and as of right, and be

represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the agency's order, may intervene in any proceeding to review such order. The Attorney General shall not dispose of or discontinue said proceeding to review over the objection of such party or intervenors aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said proceeding unaffected by the action or nonaction of the Attorney General therein.

JURISDICTION OF PROCEEDING

SEC. 9. (a) Upon the filing and service of a petition to review, the court of appeals shall have jurisdiction of the proceeding. The court of appeals in which the record on review is filed, on such filing, shall have jurisdiction to vacate stay orders or interlocutory injunctions theretofore granted by any court, and shall have exclusive jurisdiction to make and enter, upon the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY INJUNCTIONS

(b) The filing of the petition to review shall not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. Where the petitioner makes application for an interlocutory injunction suspending of restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this act, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General of the United States. In cases where irreparable damage would otherwise ensue to the petitioner, the court of appeals may, on hearing, after not less than 5 days' notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of such order pending the hearing on the application for such interlocutory injunction, in which case such order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that such irreparable damage would result to petitioner and specifying the nature of such damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, upon a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

The hearing upon such an application for an interlocutory injunction shall be given preference and expedited and shall be heard at the earliest practicable date after the expiration of the notice of hearing on the application provided for above.

Upon the final hearing of any proceeding to review any order under this act, the same requirements as to precedence and expedition shall apply.

REVIEW IN THE SUPREME COURT ON CERTIORARI OR CERTIFICATION

SEC. 10. An order granting or denying an interlocutory injunction under section 9 (b) of this act shall be subject to review by the Supreme Court of the United States upon writ of certiorari as provided in title 28, United States Code, section 1254 (1): *Provided*, That application therefor be duly made within 30 days after the entry of such order. The final judgment of the court of appeals in a proceeding to review under this act shall be subject to review by the Supreme Court of the United States upon a writ of certiorari in accordance with the provisions

of title 28, United States Code, section 1254 (1): *Provided further*, That application therefor be duly made within 60 days after the entry of such judgment. Either the United States or the agency or an aggrieved party may file such petition for a writ of certiorari. The provisions of title 28, United States Code, section 1254 (3), regarding certification, and of title 28, United States Code, section 2101 (e), regarding stays, shall also apply to proceedings under this act.

RULES

SEC. 11. The several courts of appeals shall adopt and promulgate rules governing the practice and procedure, including prehearing conference procedure, in proceedings to review orders under this act: *Provided, however*, That such rules shall be approved by the Judicial Conference of the United States.

ENFORCEMENT

SEC. 12. The several United States district courts are hereby vested with jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order heretofore or hereafter issued under section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 161).

REPEALS

SEC. 13. All laws or parts of laws inconsistent with the provisions of this act are repealed.

EFFECTIVE DATE

SEC. 14. This act shall take effect on the 30th day after the date of its approval. However, actions to enjoin, set aside, or suspend orders of the Federal Communications Commission or the Secretary of Agriculture, which are pending when this act becomes effective, shall not be affected thereby, but shall proceed to final disposition under the existing law.

With the following committee amendments:

Page 2, line 17, delete "under" and insert "reviewable in accordance with the provisions of section 402 (a) of."

Page 3, lines 13 through 17, delete ": *Provided*, That the venue of any proceeding to review orders now reviewable under section 402 (b) of the Communications Act of 1934, as amended, shall be in the United States Court of Appeals for the District of Columbia," and place a period after the word "Columbia" in line 13.

Page 9, line 25, delete "30" and insert "45."

Page 10, line 6, delete "60" and insert "90."

The committee amendments were agreed to.

Mr. REED of Illinois. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REED of Illinois:

On page 2, line 14, after "Commission", strike out the comma and insert "or the Federal Maritime Board," and at the end of the line, and before the period, insert "or board, as the case may require."

On page 3, line 3, after "Commission", insert "or the Federal Maritime Board."

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, and was read the third time, and passed.

The title was amended so as to read: "A bill to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping

Act, 1916, as amended, and the Inter-coastal Shipping Act, 1933, as amended."

A motion to reconsider was laid on the table.

DEPARTMENT OF COMMERCE

The Clerk called the bill (S. 2969) to authorize relief of authorized certifying officers of terminated war agencies in liquidation by the Department of Commerce.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Comptroller General of the United States is authorized and directed to allow credit, in the accounts of authorized certifying officers of terminated war agencies in process of liquidation by the Department of Commerce at the time of the enactment of this act, for the amounts of suspensions and disallowances, which have been, or may be, raised by the General Accounting Office on account of payments made in accordance with vouchers certified by such certifying officers: *Provided*, That the Secretary of Commerce or his authorized representative shall certify that in his opinion there is no evidence of fraud or collusion on the part of the certifying officers in connection with the payments: *Provided further*, That nothing under this act shall operate to relieve from liability to the United States, any payee who has received any payment of Government funds to which he is not entitled.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DEPARTMENT OF THE INTERIOR

The Clerk called the bill (S. 3226) to authorize the relief of authorized certifying officers of terminated war agencies in liquidation by the Department of the Interior.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Comptroller General of the United States is authorized and directed to allow credit in the accounts of authorized certifying officers of terminated war agencies, in process of liquidation by the Department of the Interior at the time of the enactment of this act, for the amounts of suspensions and disallowances, which have been, or may be, raised by the General Accounting Office on account of payments made in accordance with vouchers certified by such certifying officers: *Provided*, That the Secretary of the Interior or his authorized representative shall certify that in his opinion there is no evidence of fraud or collusion on the part of the certifying officers in connection with the payments.

SEC. 2. The expression "terminated war agencies," as used in this act, means the Solid Fuels Administration for War, the Petroleum Administration for War, the War Relocation Authority, the Coal Mines Administration, the Office of the United States High Commissioner to the Philippine Islands, and that part of the functions of the Division of Territories and Island Possessions authorized under the head of "Emergency fund, Territories and island possessions (national defense)" by the joint resolution of December 23, 1941 (55 Stat. 855, 856).

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

FORWARDING AND RETURN OF SECOND-, THIRD-, AND FOURTH-CLASS MAIL

The Clerk called the bill (S. 3118) relating to the forwarding and return of

second-, third-, and fourth-class mail, the collection of postage due at the time of delivery, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That, under such regulations as the Postmaster General may prescribe, second-, third-, and fourth-class matter which is undeliverable as addressed may be forwarded to the addressee or returned to the sender and the postage for such service may be prepaid or collected on delivery of the matter in accordance with the instructions and pledge of the addressee or sender, as the case may be, to pay the forwarding or return postage, and such matter, including that of a perishable or urgent nature, for which payment of forwarding or return postage is not pledged, may be forwarded or returned under such conditions as the Postmaster General shall prescribe, but when the addressee or sender refuses to pay the required postage, the forwarding or return of further matter may be discontinued.

SEC. 2. (a) Under such regulations as the Postmaster General may prescribe, the addressee or sender of second-, third-, or fourth-class matter which is undeliverable as addressed may be so notified, and there shall be a charge for each such notice of not to exceed 5 cents.

(b) When copies of any publication of the second class mailed by a publisher or news agents at the pound rate or free-in-county of publication are undeliverable as addressed, such publisher or agent shall be notified of that fact in such manner and at such time as the Postmaster General may prescribe, for which service there shall be a charge of not to exceed 5 cents, and copies of the publication received subsequent to such notification shall be treated as provided by this act or as may otherwise be directed by the Postmaster General.

SEC. 3. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed. Such repeal shall include, but shall not be limited to, the following laws and parts of laws: (1) Revised Statutes, section 3885 (39 U. S. C., sec. 253); (2) section 4 of the act of June 13, 1898 (30 Stat. 444), as amended by section 9 of the act of March 3, 1903 (32 Stat. 1176); and the act of November 19, 1919 (41 Stat. 360), relative to forwarding or return of certain mail matter (39 U. S. C. 276, 278); (3) the next to the last paragraph of the act of May 12, 1910 (36 Stat. 366), as amended by the act of July 21, 1932 (47 Stat. 709), relating to second-class publications undeliverable at the address thereon (39 U. S. C. 277).

The bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

PERIODIC CENSUS OF GOVERNMENTS

The Clerk called the bill (H. R. 7265) to provide for the conduct of a periodic census of governments.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That (a) the Secretary of Commerce, hereinafter referred to as the Secretary, shall take, compile, and publish for the year 1952 and for every fifth year thereafter a census of governments, to include but not be limited to data on taxes and tax valuations, governmental receipts, expenditures, indebtedness, and employees of States, counties, cities, and other governmental units in the United States and in such of its Territories and possessions as may be determined by the Secretary.

(b) Inquiries, and the number, form, and subdivisions thereof for the census of governments, shall be determined by the Secretary: *Provided*, That nothing in this act

81ST CONGRESS
2^D SESSION

H. R. 5487

H. R. 5487

IN THE SENATE OF THE UNITED STATES

JUNE 6 (legislative day, MARCH 29), 1950

Read twice and referred to the Committee on the Judiciary

AN ACT

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 DEFINITIONS

4 SECTION 1. As used in this Act—

5 (a) “Court of appeals” means a court of appeals of
6 the United States.

(b) “Clerk” means the clerk of the court in which the petition for the review of an order, reviewable under this Act, is filed.

4 (c) “Petitioner” means the party or parties by whom
5 a petition to review an order, reviewable under this Act, is
6 filed.

(d) When the order sought to be reviewed was entered by the Federal Communications Commission, "agency" means the Commission; when such order was entered by the Secretary of Agriculture, "agency" means the Secretary; when such order was entered by the United States Maritime Commission, or the Federal Maritime Board, "agency" means that Commission or Board as the case may require.

14 JURISDICTION

SEC. 2. The court of appeals shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of, all final orders (a) of the Federal Communications Commission made reviewable in accordance with the provisions of section 402 (a) of the Communications Act of 1934, as amended, and (b) of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and under the Perishable Agricultural Commodities Act, 1930, as amended, except orders issued under sections 309 (e) and 317 of the Packers and Stockyards Act and section 7 (a) of the Perishable

1 Agricultural Commodities Act, and (c) such final orders
2 of the United States Maritime Commission or the Federal
3 Maritime Board entered under authority of the Shipping
4 Act, 1916, as amended, and the Intercoastal Shipping Act,
5 1933, as amended, as are now subject to judicial review
6 pursuant to the provisions of section 31, Shipping Act, 1916,
7 as amended.

8 Such jurisdiction shall be invoked by the filing of a peti-
9 tion as provided in section 4 hereof.

10 VENUE

11 SEC. 3. The venue of any proceeding under this Act
12 shall be in the judicial circuit wherein is the residence of the
13 party or any of the parties filing the petition for review,
14 or wherein such party or any of such parties has its principal
15 office, or in the United States Court of Appeals for the
16 District of Columbia.

17 REVIEW OF ORDERS

18 SEC. 4. Any party aggrieved by a final order review-
19 able under this Act may, within sixty days after entry of
20 such order, file in the court of appeals, wherein the venue
21 as prescribed by section 3 hereof lies, a petition to review
22 such order. Upon the entry of such an order, notice thereof
23 shall be given promptly by the agency by service or publica-
24 tion in accordance with the rules of such agency. The action
25 in court shall be brought against the United States. The

1 petition shall contain a concise statement of (a) the nature
2 of the proceedings as to which review is sought, (b) the
3 facts upon which venue is based, (c) the grounds on which
4 relief is sought, and (d) the relief prayed. The petitioner
5 shall attach to the petition, as exhibits, copies of the order,
6 report, or decision of the agency. The clerk shall serve a
7 true copy of the petition upon the agency and upon the
8 Attorney General of the United States by mailing by regis-
9 tered mail, with request for return receipt, a true copy to the
10 agency and a true copy to the Attorney General.

11 PREHEARING CONFERENCE

12 SEC. 5. The court of appeals may hold a prehearing con-
13 ference or direct a judge of such court to hold a prehearing
14 conference.

15 RECORD TO BE CERTIFIED

16 SEC. 6. Within the time prescribed by, and in accord-
17 ance with the requirements of, rules promulgated by the
18 court of appeals in which the proceeding is pending, unless
19 the proceeding has been terminated on a motion to dismiss
20 the petition, the agency shall file in the office of the clerk
21 the record on review, duly certified, consisting of the plead-
22 ings, evidence, and proceedings before the agency, or such
23 portions thereof as such rules shall require to be included in
24 such record, or such portions thereof as the petitioner and

1 the agency, with the approval of the court of appeals, shall
2 agree upon in writing.

3 PETITIONS HEARD ON RECORD BEFORE RESPONDENT

4 SEC. 7. (a) Petitions to review orders reviewable under
5 this Act, unless determined on a motion to dismiss the peti-
6 tion, shall be heard in the court of appeals upon the record
7 of the pleadings, evidence adduced, and proceedings before
8 the agency where the agency has in fact held a hearing
9 whether or not required to do so by law.

10 PROCEDURE WHERE NO HEARING HELD

11 (b) Where the agency has held no hearing prior to
12 the taking of the action of which review is sought by the
13 petition, the court of appeals shall determine whether a
14 hearing is required by law. After such determination, the
15 court shall (1) where a hearing is required by law, remand
16 the proceedings to the agency for the purpose of holding
17 a hearing; (2) where a hearing is not required by law,
18 pass upon the issues presented when it appears from the
19 pleadings and affidavits filed by the parties that no genuine
20 issue of material fact is presented; and (3) where a hear-
21 ing is not required by law, and a genuine issue of material
22 fact is presented, transfer the proceedings to a United States
23 district court for the district where the petitioner or any

petitioner resides or has its principal office for hearing and determination as if such proceedings were originally initiated in the district court. The procedure in such cases in the United States district courts shall be governed by the Federal Rules of Civil Procedure.

ADDITIONAL EVIDENCE

(c) If a party to a proceeding to review shall apply to the court of appeals, in which the proceeding is pending, for leave to adduce additional evidence and shall show to the satisfaction of such court (1) that such additional evidence is material, and (2) that there were reasonable grounds for failure to adduce such evidence before the agency, such court may order such additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file a certified transcript of such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order.

SCOPE OF REVIEW

(d) The findings of the agency as to the facts, if supported by substantial evidence, shall be conclusive. No objection to the order of the agency shall be considered by

1 the court unless such objection shall have been urged before
2 the agency or unless there were reasonable grounds for
3 failure to do so.

4 REPRESENTATION IN PROCEEDING—INTERVENTION

5 SEC. 8. The Attorney General shall be responsible for
6 and have charge and control of the interests of the Govern-
7 ment in all court proceedings authorized by this Act. The
8 agency, and any party or parties in interest in the proceed-
9 ing before the agency whose interests will be affected if an
10 order of the agency is or is not enjoined, set aside, or
11 suspended, may appear as parties thereto of their own
12 motion and as of right, and be represented by counsel in
13 any proceeding to review such order. Communities, asso-
14 ciations, corporations, firms, and individuals, whose interests
15 are affected by the agency's order, may intervene in any
16 proceeding to review such order. The Attorney General
17 shall not dispose of or discontinue said proceeding to review
18 over the objection of such party or intervenors aforesaid,
19 but said intervenor or intervenors may prosecute, defend, or
20 continue said proceeding unaffected by the action or non-
21 action of the Attorney General therein.

22 JURISDICTION OF PROCEEDING

23 SEC. 9. (a) Upon the filing and service of a petition
24 to review, the court of appeals shall have jurisdiction of the

1 proceeding. The court of appeals in which the record on
2 review is filed, on such filing, shall have jurisdiction to vacate
3 stay orders or interlocutory injunctions theretofore granted
4 by any court, and shall have exclusive jurisdiction to make
5 and enter, upon the petition, evidence, and proceedings set
6 forth in the record on review, a judgment determining the
7 validity of, and enjoining, setting aside, or suspending, in
8 whole or in part, the order of the agency.

9 STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY

10 INJUNCTIONS

11 (b) The filing of the petition to review shall not of
12 itself stay or suspend the operation of the order of the agency,
13 but the court of appeals in its discretion may restrain or
14 suspend, in whole or in part, the operation of the order pend-
15 ing the final hearing and determination of the petition.
16 Where the petitioner makes application for an interlocutory
17 injunction suspending or restraining the enforcement, opera-
18 tion, or execution of, or setting aside, in whole or in part,
19 any order reviewable under this Act, at least five days' notice
20 of the hearing thereon shall be given to the agency and to
21 the Attorney General of the United States. In cases where
22 irreparable damage would otherwise ensue to the petitioner,
23 the court of appeals may, on hearing, after not less than
24 five days' notice to the agency and to the Attorney General,
25 order a temporary stay or suspension, in whole or in part,

1 of the operation of the order of the agency for not more than
2 sixty days from the date of such order pending the hearing
3 on the application for such interlocutory injunction, in which
4 case such order of the court of appeals shall contain a specific
5 finding, based on evidence submitted to the court of appeals,
6 and identified by reference thereto, that such irreparable dam-
7 age would result to petitioner and specifying the nature of
8 such damage. The court of appeals, at the time of hearing
9 the application for an interlocutory injunction, upon a like
10 finding, may continue the temporary stay or suspension, in
11 whole or in part, until decision on the application.

12 The hearing upon such an application for an interlocutory
13 injunction shall be given preference and expedited and shall
14 be heard at the earliest practicable date after the expiration
15 of the notice of hearing on the application provided for above.

16 Upon the final hearing of any proceeding to review any
17 order under this Act, the same requirements as to precedence
18 and expedition shall apply.

19 REVIEW IN THE SUPREME COURT ON CERTIORARI OR
20 CERTIFICATION

21 SEC. 10. An order granting or denying an interlocutory
22 injunction under section 9 (b) of this Act shall be subject to
23 review by the Supreme Court of the United States upon writ
24 of certiorari as provided in title 28, United States Code,
25 section 1254 (1): *Provided*, That application therefor be

1 duly made within forty-five days after the entry of such
2 order. The final judgment of the court of appeals in a pro-
3 ceeding to review under this Act shall be subject to review by
4 the Supreme Court of the United States upon a writ of cer-
5 tiorari in accordance with the provisions of title 28, United
6 States Code, section 1254 (1) : *Provided further*, That
7 application therefor be duly made within ninety days
8 after the entry of such judgment. Either the United States
9 or the agency or an aggrieved party may file such petition
10 for a writ of certiorari. The provisions of title 28, United
11 States Code, section 1254 (3), regarding certification, and
12 of title 28, United States Code, section 2101 (e), regarding
13 stays, shall also apply to proceedings under this Act.

14 RULES

15 SEC. 11. The several courts of appeals shall adopt and
16 promulgate rules governing the practice and procedure,
17 including prehearing conference procedure, in proceedings to
18 review orders under this Act: *Provided, however*, That such
19 rules shall be approved by the Judicial Conference of the
20 United States.

21 ENFORCEMENT

22 SEC. 12. The several United States district courts are
23 hereby vested with jurisdiction specifically to enforce, and
24 to enjoin and restrain any person from violating any order

1 heretofore or hereafter issued under section 203 of the
2 Packers and Stockyards Act, 1921 (42 Stat. 161).

3 REPEALS

4 SEC. 13. All laws or parts of laws inconsistent with
5 the provisions of this Act are repealed.

6 EFFECTIVE DATE

7 SEC. 14. This Act shall take effect on the thirtieth day
8 after the date of its approval. However, actions to enjoin,
9 set aside, or suspend orders of the Federal Communications
10 Commission or the Secretary of Agriculture, which are
11 pending when this Act becomes effective, shall not be
12 affected thereby, but shall proceed to final disposition under
13 the existing law.

Passed the House of Representatives June 5, 1950.

Attest:

RALPH R. ROBERTS,

Clerk.

AN ACT

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping Act, 1916, as amended, and the Interoceanic Shipping Act, 1933, as amended.

JUNE 6 (legislative day, March 29), 1950

Read twice and referred to the Committee on the
Judiciary

PROVIDING FOR THE REVIEW OF ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION, OF CERTAIN ORDERS OF THE SECRETARY OF AGRICULTURE MADE UNDER THE PACKERS AND STOCKYARDS ACT, AND THE PERISHABLE AGRICULTURAL COMMODITIES ACT, AND OF CERTAIN ORDERS OF THE UNITED STATES MARITIME COMMISSION

DECEMBER 11 (legislative day, NOVEMBER 27), 1950.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5487]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, having considered the same, report favorably thereon, with amendments, and recommend that the bill, as amended, do pass.

AMENDMENTS

(1) On page 2, line 12, following the word "Board" insert ", or the Maritime Administration,".

(2) On page 2, line 13, following the word "Commission" strike the words "or Board" and insert in lieu thereof ", Board, or Administration".

(3) On page 3, line 3, following the word "Board", insert "or the Maritime Administration".

(4) On page 11, line 10, following the word "Agriculture" insert "or the United States Maritime Commission, the Federal Maritime Board and the Maritime Administration".

(5) Following the word "Board" in the seventh line of the title, amend the title by inserting "or the Maritime Administration".

The purpose of these amendments is to bring the language of the bill into conformity with the changes made by Reorganization Plan No. 21, 1950.

(6) On page 6, line 21, strike all of subsection (d), including the title of that subsection.

The purpose of this amendment is to eliminate the scope of review subsection which, in the committee's opinion, is in conflict with the Administrative Procedures Act.

PURPOSES

The purposes of the proposed legislation are:

(1) To facilitate the work of the Federal courts by substituting a direct appeal to the circuit court of appeals for a trial de novo before a three-man judge district court in the review of the orders of certain Government agencies, and

(2) to replace the right of appeal from a three-man judge court to the Supreme Court with a relegation to the writ of certiorari from the decision of the court of appeals.

STATEMENT

I. HISTORY OF LEGISLATION

This bill has its origin in a request made by the late Chief Justice Stone that the Judicial Conference of the United States make a study of the procedure for the review of those administrative agency orders which were at that time subject to the procedural requirements of the Urgent Deficiency Act of 1913 with a view to recommending the enactment of legislation that would eliminate the difficulties that had developed in following that procedure. The provisions of the Urgent Deficiencies Act for review of certain agency orders by special district courts of three judges, [with an appeal as of right directly to the Supreme Court, had often not only disrupted the ordinary conduct of litigation by the district courts, by requiring the services of three judges in these cases, when in ordinary litigations only one judge is needed; but, also, as Chief Justice Stone pointed out, it had forced the Supreme Court to review many cases where the questions involved were of only minor importance, but where lengthy records and extreme technicalities had added heavily to the burden of the Court. The Chief Justice suggested that the Supreme Court should be relieved of this unnecessary burden. Accordingly, in 1942, the Judicial Conference established a committee to consider the problem. This committee made a preliminary report to the Judicial Conference in 1943. At that time the committee was enlarged by consolidation with another committee on three-judge-court procedure. The consolidated committee consisted of the following members:

Chief Judge Orie L. Phillips of the Court of Appeals for the Tenth Circuit of Denver, Colo. (chairman)
 Circuit Judge Armistead M. Dobie, of Virginia
 Circuit Judge Evan A. Evans, of Wisconsin (now deceased)
 Circuit Judge Learned Hand of New York
 Circuit Judge Calvert Magruder of Massachusetts
 Circuit Judge Albert B. Maris of Philadelphia
 Circuit Judge Kimbrough Stone of Missouri
 District Judge (now Circuit Judge) Walter C. Lindley of Illinois
 Commissioner Clyde B. Aitchison of the Interstate Commerce Commission

For the next 3 years the committee worked steadily on the problem. It sat and collaborated with representatives of the agencies concerned: the Solicitor of the Department of Agriculture, the General Counsel of the Federal Communications Commission, attorneys for the United States Maritime Commission, and the Solicitor General of the United States. It prepared and discussed drafts of bills, and revised them to meet suggestions coming from many sources, including the administrative agencies and practitioners before them. It prepared successive reports with proposals of bills, which in turn were discussed by the Judicial Conference at its annual meetings in 1944, 1945, and 1946.

Finally, in 1946, the Judicial Conference recommended that specified legislation along the lines of its committees' recommendations should be enacted by the Congress. These legislative proposals were introduced as House bills in the Eightieth Congress. They were extensively discussed at hearings before the House Judiciary Committee in that Congress, and favorably reported, with amendments. In the Eighty-first Congress the unenacted parts of the legislation were reintroduced and made the subject of further extensive hearings and deliberations in the Judicial Conference and the agencies concerned, as well as by the Judiciary Committees of the House and the Senate. The present bill, with the amendments proposed by the committee, is a carefully considered result of all this study. It is approved by the judiciary, by the agencies concerned, by the Attorney General, and by practitioners and others interested. It is the view of the committee that with this background the legislation is the best solution possible to a most technical and troublesome problem in administrative and judicial procedure.

II. PRESENT LAW

At present the method of review of most of judicially reviewable orders of the agencies involved in the proposed bill is prescribed by many provisions scattered throughout different statutes. These provisions have a common feature, that the controversy over the agency order is heard and decided *de novo* in a district court. When an agency order is challenged by an aggrieved party as illegal, the present law, in many cases, requires that the controversy shall be heard in a district court by a panel of three judges, one of whom at least shall be a circuit judge and the others of whom may be district judges. The pattern for this was established by the Urgent Deficiencies Act of 1913, and is continued by the present law (28 U. S. C. 2284). In cases under this provision and others adopting the procedure, in which the trial in the district court is by three judges sitting *en banc*, there is a right of review by appeal to the Supreme Court of the United States.

III. ANALYSIS OF BILL

A. *Jurisdiction*

The proposed bill confers jurisdiction upon the circuit courts of appeal to review the orders of the agencies named. Jurisdiction is invoked by the filing of a petition for review by an aggrieved party which sets forth (a) the nature of the proceedings as to which review is sought, (b) the facts upon which venue is based, (c) the grounds on

which relief is sought, and (d) the relief prayed. The action is brought against the United States as the primary party, but the agency concerned and any party in interest in the proceedings before the agency may appear as parties to the action as of right. Provision is also made for the intervention of those whose interests are affected by the agency's order.

B. Venue

Venue under this bill may be in any one of three places, the residence of the party filing the petition for review, the place where such party has its principal office and the United States Court of Appeals for the District of Columbia.

C. Scope of review

Review by the circuit court of appeals is limited to the record made before the agencies with certain exceptions. First of all, if a party establishes to the circuit court of appeals that he can produce additional evidence and that he had reasonable grounds for not presenting that evidence before the agency, he may have the proceedings referred to the agency for the purpose of adducing such additional evidence. Secondly, if no hearing were required before the agency and none were held, but a genuine issue of material fact is presented to the court of appeals, that court may transfer the proceedings to a district court for the purpose of holding a hearing and making a determination of fact. Thirdly, if no hearing were required before the agency and none were held, the court may consider the controversy on the pleadings and affidavits filed by the parties if no genuine issue of material fact is presented.

The scope of the review of these Agency orders by the Circuit Court of Appeals is governed by section 10 (e) of the Administrative Procedures Act.

Review of the action taken on appeal by the Circuit Court of Appeals is limited to the writ of certiorari.

IV. CONCLUSION

The pattern used here is the one established for review of orders of the Federal Trade Commission in 1914 (15 U. S. C. 45c) and followed by other laws since then in relation to many other agencies, including the Securities and Exchange Commission, the Bituminous Coal Commission, and the National Labor Relations Board.

The proposed method of review has important advantages in simplicity and expedition over the present method. First, the submission of the cases upon the records made before the administrative agencies will avoid the making of two records, one before the agency and one before the court, and thus going over the same ground twice. Under the Administrative Procedure Act of June 11, 1946, the record before the agencies will be made in such a way that all questions for the determination of the courts on review, and the facts bearing upon them, will be presented and the rights of the parties will be fully protected. The bill has adequate provisions in section 7 (b) and (c) for the taking of evidence either by the agency or in the district court, when for one reason or another that is necessary because a suitable hearing was not held prior to initiation of the proceeding in the court of appeals.

Second, in many cases in which hearing in the district courts by panels of three judges is now required there will be a large saving of judicial time and energy. It is generally recognized that three-judge courts are not well adapted for conducting hearings. The necessity of holding conferences whenever questions arise in the course of the proceedings, as they repeatedly do in relation to such matters as the admissibility of evidence, very much slows the trial. In addition the proceeding takes the time of three judges, whereas one would be sufficient at this preliminary stage of the case. The method of review prescribed by the proposed bill would secure the collaboration of three judges at the stage where it is useful, namely, in the decision without consuming their time unnecessarily in the preceding phases of the case.

Third, the provision for review of the Supreme Court in its discretion upon certiorari, as in the review of other cases from circuit courts of appeals, will save the members of the Supreme Court from wasting their energies on cases which are not important enough to call for their attention, and enable them to concentrate more fully upon cases which require their careful consideration. By allowing certiorari, the Court will still reserve for consideration those cases in relation to administrative agencies where significant constitutional issues or substantial public interests are involved, but it will not any longer be required automatically to hear cases which are not of a nature to merit its consideration.

The mode of judicial review provided in this bill has been evolved from long study and careful consideration by all persons concerned with the difficult questions involved. It represents an important improvement in judicial procedure—one that will make for economy and expedition in the disposition of a considerable class of business of the Federal courts.

Pursuant to the finding required by rule XXIX (4) of the Standing Rules of the Senate, it is the opinion of the Committee on the Judiciary that it is necessary to dispense with the requirements of that rule in order to expedite the business of the Senate.



81ST CONGRESS
2D SESSION

[Report No. 2618]

JUNE 6 (legislative day, MARCH 29), 1950

Read twice and referred to the Committee on the Judiciary

DECEMBER 11 (legislative day, NOVEMBER 27), 1950

Reported by Mr. KILGORE, with amendments

[Omit the part struck through and insert the part printed in *italic*]

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

DEFINITIONS

4 SECTION 1. As used in this Act—

5 (a) “Court of appeals” means a court of appeals of
6 the United States.



1 (b) "Clerk" means the clerk of the court in which the
2 petition for the review of an order, reviewable under this
3 Act, is filed.

4 (c) "Petitioner" means the party or parties by whom
5 a petition to review an order, reviewable under this Act, is
6 filed.

7 (d) When the order sought to be reviewed was entered
8 by the Federal Communications Commission, "agency"
9 means the Commission; when such order was entered by the
10 Secretary of Agriculture, "agency" means the Secretary;
11 when such order was entered by the United States Mari-
12 time Commission, or the Federal Maritime Board, *or the*
13 *Maritime Administration*, "agency" means that Commis-
14 sion ~~or Board~~, *Board, or Administration* as the case may
15 require.

16 JURISDICTION

17 SEC. 2. The court of appeals shall have exclusive juris-
18 diction to enjoin, set aside, suspend (in whole or in part),
19 or to determine the validity of, all final orders (a) of the
20 Federal Communications Commission made reviewable
21 in accordance with the provisions of section 402 (a) of
22 the Communications Act of 1934, as amended, and (b) of
23 the Secretary of Agriculture made under the Packers and
24 Stockyards Act, 1921, as amended, and under the Perishable
25 Agricultural Commodities Act, 1930, as amended, except

1 orders issued under sections 309 (c) and 317 of the Packers
2 and Stockyards Act and section 7 (a) of the Perishable
3 Agricultural Commodities Act, and (c) such final orders
4 of the United States Maritime Commission or the Federal
5 Maritime Board *or the Maritime Administration* entered
6 under authority of the Shipping Act, 1916, as amended, and
7 the Intercoastal Shipping Act, 1933, as amended, as are now
8 subject to judicial review pursuant to the provisions of sec-
9 tion 31, Shipping Act, 1916, as amended.

10 Such jurisdiction shall be invoked by the filing of a peti-
11 tion as provided in section 4 hereof.

12 VENUE

13 SEC. 3. The venue of any proceeding under this Act
14 shall be in the judicial circuit wherein is the residence of the
15 party or any of the parties filing the petition for review,
16 or wherein such party or any of such parties has its principal
17 office, or in the United States Court of Appeals for the
18 District of Columbia.

19 REVIEW OF ORDERS

20 SEC. 4. Any party aggrieved by a final order review-
21 able under this Act may, within sixty days after entry of
22 such order, file in the court of appeals, wherein the venue
23 as prescribed by section 3 hereof lies, a petition to review
24 such order. Upon the entry of such an order, notice thereof
25 shall be given promptly by the agency by service or publica-

1 tion in accordance with the rules of such agency. The action
2 in court shall be brought against the United States. The
3 petition shall contain a concise statement of (a) the nature
4 of the proceedings as to which review is sought, (b) the
5 facts upon which venue is based, (c) the grounds on which
6 relief is sought, and (d) the relief prayed. The petitioner
7 shall attach to the petition, as exhibits, copies of the order,
8 report, or decision of the agency. The clerk shall serve a
9 true copy of the petition upon the agency and upon the
10 Attorney General of the United States by mailing by regis-
11 tered mail, with request for return receipt, a true copy to the
12 agency and a true copy to the Attorney General.

13 PREHEARING CONFERENCE

14 SEC. 5. The court of appeals may hold a prehearing con-
15 ference or direct a judge of such court to hold a prehearing
16 conference.

17 RECORD TO BE CERTIFIED

18 SEC. 6. Within the time prescribed by, and in accord-
19 ance with the requirements of, rules promulgated by the
20 court of appeals in which the proceeding is pending, unless
21 the proceeding has been terminated on a motion to dismiss
22 the petition, the agency shall file in the office of the clerk
23 the record on review, duly certified, consisting of the plead-
24 ings, evidence, and proceedings before the agency, or such
25 portions thereof as such rules shall require to be included in

1 such record, or such portions thereof as the petitioner and
2 the agency, with the approval of the court of appeals, shall
3 agree upon in writing.

4 PETITIONS HEARD ON RECORD BEFORE RESPONDENT

5 SEC. 7. (a) Petitions to review orders reviewable under
6 this Act, unless determined on a motion to dismiss the peti-
7 tion, shall be heard in the court of appeals upon the record
8 of the pleadings, evidence adduced, and proceedings before
9 the agency where the agency has in fact held a hearing
10 whether or not required to do so by law.

11 PROCEDURE WHERE NO HEARING HELD

12 (b) Where the agency has held no hearing prior to
13 the taking of the action of which review is sought by the
14 petition, the court of appeals shall determine whether a
15 hearing is required by law. After such determination, the
16 court shall (1) where a hearing is required by law, remand
17 the proceedings to the agency for the purpose of holding
18 a hearing; (2) where a hearing is not required by law,
19 pass upon the issues presented when it appears from the
20 pleadings and affidavits filed by the parties that no genuine
21 issue of material fact is presented; and (3) where a hear-
22 ing is not required by law, and a genuine issue of material
23 fact is presented, transfer the proceedings to a United States
24 district court for the district where the petitioner or any
25 petitioner resides or has its principal office for hearing and

1 determination as if such proceedings were originally initi-
2 ated in the district court. The procedure in such cases in
3 the United States district courts shall be governed by the
4 Federal Rules of Civil Procedure.

5

ADDITIONAL EVIDENCE

6 (c) If a party to a proceeding to review shall apply
7 to the court of appeals, in which the proceeding is pending,
8 for leave to adduce additional evidence and shall show to
9 the satisfaction of such court (1) that such additional evi-
10 dence is material, and (2) that there were reasonable
11 grounds for failure to adduce such evidence before the agency,
12 such court may order such additional evidence and any
13 counterevidence the opposite party desires to offer to be
14 taken by the agency. The agency may modify its findings
15 of fact, or make new findings, by reason of the additional
16 evidence so taken and may modify or set aside its order
17 and shall file a certified transcript of such additional evi-
18 dence, such modified findings or new findings, and such
19 modified order or the order setting aside the original order.

20

SCOPE OF REVIEW

21 (d) The findings of the agency as to the facts, if
22 supported by substantial evidence, shall be conclusive. No
23 objection to the order of the agency shall be considered by
24 the court unless such objection shall have been urged before
25 the agency or unless there were reasonable grounds for
26 failure to do so.

1 REPRESENTATION IN PROCEEDING—INTERVENTION

2 SEC. 8. The Attorney General shall be responsible for
3 and have charge and control of the interests of the Govern-
4 ment in all court proceedings authorized by this Act. The
5 agency, and any party or parties in interest in the proceed-
6 ing before the agency whose interests will be affected if an
7 order of the agency is or is not enjoined, set aside, or
8 suspended, may appear as parties thereto of their own
9 motion and as of right, and be represented by counsel in
10 any proceeding to review such order. Communities, asso-
11 ciations, corporations, firms, and individuals, whose interests
12 are affected by the agency's order, may intervene in any
13 proceeding to review such order. The Attorney General
14 shall not dispose of or discontinue said proceeding to review
15 over the objection of such party or intervenors aforesaid,
16 but said intervenor or intervenors may prosecute, defend, or
17 continue said proceeding unaffected by the action or non-
18 action of the Attorney General therein.

19 JURISDICTION OF PROCEEDING

20 SEC. 9. (a) Upon the filing and service of a petition
21 to review, the court of appeals shall have jurisdiction of the
22 proceeding. The court of appeals in which the record on
23 review is filed, on such filing, shall have jurisdiction to vacate
24 stay orders or interlocutory injunctions theretofore granted

1 by any court, and shall have exclusive jurisdiction to make
2 and enter, upon the petition, evidence, and proceedings set
3 forth in the record on review, a judgment determining the
4 validity of, and enjoining, setting aside, or suspending, in
5 whole or in part, the order of the agency.

6 STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY

7 INJUNCTIONS

8 (b) The filing of the petition to review shall not of
9 itself stay or suspend the operation of the order of the agency,
10 but the court of appeals in its discretion may restrain or
11 suspend, in whole or in part, the operation of the order pend-
12 ing the final hearing and determination of the petition.
13 Where the petitioner makes application for an interlocutory
14 injunction suspending or restraining the enforcement, opera-
15 tion, or execution of, or setting aside, in whole or in part,
16 any order reviewable under this Act, at least five days' notice
17 of the hearing thereon shall be given to the agency and to
18 the Attorney General of the United States. In cases where
19 irreparable damage would otherwise ensue to the petitioner,
20 the court of appeals may, on hearing, after not less than
21 five days' notice to the agency and to the Attorney General,
22 order a temporary stay or suspension, in whole or in part,
23 of the operation of the order of the agency for not more than
24 sixty days from the date of such order pending the hearing
25 on the application for such interlocutory injunction, in which

1 case such order of the court of appeals shall contain a specific
2 finding, based on evidence submitted to the court of appeals,
3 and identified by reference thereto, that such irreparable dam-
4 age would result to petitioner and specifying the nature of
5 such damage. The court of appeals, at the time of hearing
6 the application for an interlocutory injunction, upon a like
7 finding, may continue the temporary stay or suspension, in
8 whole or in part, until decision on the application.

9 The hearing upon such an application for an interlocutory
10 injunction shall be given preference and expedited and shall
11 be heard at the earliest practicable date after the expiration
12 of the notice of hearing on the application provided for above.

13 Upon the final hearing of any proceeding to review any
14 order under this Act, the same requirements as to precedence
15 and expedition shall apply.

16 REVIEW IN THE SUPREME COURT ON CERTIORARI OR
17 CERTIFICATION

18 SEC. 10. An order granting or denying an interlocutory
19 injunction under section 9 (b) of this Act shall be subject to
20 review by the Supreme Court of the United States upon writ
21 of certiorari as provided in title 28, United States Code,
22 section 1254 (1): *Provided*, That application therefor be
23 duly made within forty-five days after the entry of such
24 order. The final judgment of the court of appeals in a pro-
25 ceeding to review under this Act shall be subject to review by

1 the Supreme Court of the United States upon a writ of cer-
2 tiorari in accordance with the provisions of title 28, United
3 States Code, section 1254 (1): *Provided further*, That
4 application therefor be duly made within ninety days
5 after the entry of such judgment. Either the United States
6 or the agency or an aggrieved party may file such petition
7 for a writ of certiorari. The provisions of title 28, United
8 States Code, section 1254 (3), regarding certification, and
9 of title 28, United States Code, section 2101 (e), regarding
10 stays, shall also apply to proceedings under this Act.

11 RULES

12 SEC. 11. The several courts of appeals shall adopt and
13 promulgate rules governing the practice and procedure,
14 including prehearing conference procedure, in proceedings to
15 review orders under this Act: *Provided, however*, That such
16 rules shall be approved by the Judicial Conference of the
17 United States.

18 ENFORCEMENT

19 SEC. 12. The several United States district courts are
20 hereby vested with jurisdiction specifically to enforce, and
21 to enjoin and restrain any person from violating any order
22 heretofore or hereafter issued under section 203 of the
23 Packers and Stockyards Act, 1921 (42 Stat. 161).

REPEALS

SEC. 13. All laws or parts of laws inconsistent with the provisions of this Act are repealed.

EFFECTIVE DATE

SEC. 14. This Act shall take effect on the thirtieth day after the date of its approval. However, actions to enjoin, set aside, or suspend orders of the Federal Communications Commission or the Secretary of Agriculture, *or the United States Maritime Commission, the Federal Maritime Board, and the Maritime Administration* which are pending when this Act becomes effective, shall not be affected thereby, but shall proceed to final disposition under the existing law.

Amend the title so as to read: "An Act to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended."

Passed the House of Representatives June 5, 1950.

Attest:

RALPH R. ROBERTS,

Clerk.

Calendar No. 2618

81ST CONGRESS
2^D Session

H. R. 5487

[Report No. 2618]

AN ACT

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

JUNE 6 (legislative day, MARCH 29), 1950

Read twice and referred to the Committee on the
Judiciary

DECEMBER 11 (legislative day, NOVEMBER 27), 1950

Reported with amendments

had been reported from the Committee on the Judiciary, with an amendment, on page 1, line 5, after the word "of", to strike out "\$3,874.79" and insert "\$661.86."

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

E. C. BROWDER AND CHARLES KENYON

The Senate proceeded to consider the bill (S. 2830) for the relief of E. C. Browder and Charles Kenyon, which had been reported from the Committee on the Judiciary, with amendments, on page 1, line 5, after the name "Charles", to strike out "Kenyon" and insert "Keylon"; in line 6, after the words "sum of", to strike out "\$8,397.40" and insert "\$4,800", and on page 2, line 4, after the name "Charles", to strike out "Kenyon" and insert "Keylon", so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to E. C. Browder and Charles Keylon, of Harlman, Tenn., the sum of \$4,800, in full satisfaction of their claim against the United States for damages sustained by them when they were notified by the United States Government that condemnation proceedings previously instituted against the farm of E. C. Browder had been abandoned, and then notified at a later date that the Government intended to go forward with its condemnation proceedings, which actions by the Government caused the sale, purchase, and resale of farm equipment by E. C. Browder and his partner, Charles Keylon, and interfered substantially with farming operations: *Provided*, That no part of the amount appropriated in this act in excess of 10 percent thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of E. C. Browder and Charles Keylon."

STAVROS S. NIARCHOS

The Senate proceeded to consider the bill (S. 2921) authorizing the naturalization of Stavros S. Niarchos, which had been reported from the Committee on the Judiciary with an amendment, to strike out all after the enacting clause, and insert:

That, for the purposes of the immigration and naturalization laws, Stavros S. Niarchos shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of his last entry into the United States upon payment of the required visa fee and head tax. Upon the enactment of this act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Stavros S. Niarchos."

JAMES SHELLENBERGER, JR.

The bill (S. 3513) for the relief of James Shellenberger, Jr., was announced as next in order.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. JOHNSTON of South Carolina. Mr. President, I should like to hear an explanation of the bill.

The PRESIDENT pro tempore. Will the Senator in charge of the bill explain it?

Mr. McCARRAN. Mr. President, this is the case of a little boy who is virtually blind for life because of the negligence or carelessness of Army personnel in an Army hospital.

The actual beneficiary would be the boy, though the bill provides for payment to his legal guardian. The amount of the payment provided is \$50,000.

This little boy is now 4 years old. He was born in an Army hospital in Italy, his father then being a captain in the United States Army, on official duty in that country.

At the time of this boy's birth, Army personnel in the hospital put drops in his eyes, which caused blindness in his left eye and reduced the effectiveness of his right eye to about 50 percent vision.

The Army admits that these injuries were caused by the mistake of Army personnel.

While there are no arbitrary standards for determining the amount of an award in such a case, the committee believes that \$50,000 is not excessive for the injuries sustained by this baby.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (S. 3513) for the relief of James Shellenberger, Jr., which had been reported from the Committee on the Judiciary with amendments, on page 1, beginning at line 3, to strike out:

That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to James Shellenberger, Sr., of 3835 Lincolnway East, Mishawaka, Ind., on behalf of his infant son, James Shellenberger, Jr., the sum of \$50,000, in full satisfaction of the claim of the said James Shellenberger, Jr., against the United States for compensation for permanent and complete loss of sight in one eye, partial loss of sight in the other eye, and facial disfigurement, caused by the use of an improper solution of silver nitrate in his eyes at the time of his birth in the United States Army 61 Station Hospital in Leghorn, Italy, in January 1947.

And insert:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the legal guardian of James M. Shellenberger, Jr., a minor, of

Mishawaka, Ind., the sum of \$50,000, in full settlement of all claims against the United States for the injury of said James M. Shellenberger, Jr., which resulted in the permanent loss of sight in his left eye, the partial loss of sight in his right eye, and facial disfigurement, caused by the use of an improper solution of silver nitrate in the eyes of said infant at the time of his birth in the Sixty-first Station Hospital, United States Army, at Leghorn, Italy, on January 8, 1947.

So as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the legal guardian of James M. Shellenberger, Jr., a minor, of Mishawaka, Ind., the sum of \$50,000, in full settlement of all claims against the United States for the injury of said James M. Shellenberger, Jr., which resulted in the permanent loss of sight in his left eye, the partial loss of sight in his right eye, and facial disfigurement, caused by the use of an improper solution of silver nitrate in the eyes of said infant at the time of his birth in the Sixty-first Station Hospital, United States Army, at Leghorn, Italy, on January 8, 1947: *Provided*, That no part of the amount appropriated in this act in excess of 10 percent thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of James M. Shellenberger, Jr., a minor."

REVIEW OF ORDERS OF FEDERAL COMMUNICATIONS COMMISSION

The bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, was announced as next in order.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. HENDRICKSON. Reserving the right to object, may we have a brief explanation of the bill for the Record?

The PRESIDENT pro tempore. Will the Senator from Nevada explain the bill?

Mr. McCARRAN. Mr. President, this legislation changes the method of review of certain orders of the Federal Communications Commission, the Maritime Administration, and the Department of Agriculture. At present these orders are reviewable in a trial de novo by a district court before three judges, at least one of whom must be a circuit judge, with a right of appeal to the Supreme Court. This bill would make those orders reviewable by appeal to the circuit court of appeals on the record made before the agency. Review by the Supreme Court would be by certiorari only.

The present mode of review has often disrupted the ordinary conduct of litigation.

tion by the district courts by requiring the attendance of three judges during the conduct of a trial when one would be sufficient. The right of appeal from the three-judge court directly to the Supreme Court has also forced the Supreme Court to consider cases where the questions involved were only of minor importance.

This change made by this bill is in accordance with the methods of review of orders of the Federal Trade Commission, the Securities and Exchange Commission, and the National Labor Relations Board. It is designed to accomplish a saving in judicial time and energy while still preserving the rights of the parties.

The bill carries the approval of the agencies concerned, the Attorney General, the judiciary, and practitioners.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. McFARLAND. Mr. President, I should like to have the bill go over until I can study it a little further. It involves the Communications Act, if the Senator does not mind. Next week I shall probably join with the Senator in asking unanimous consent for its passage.

Mr. McCARRAN. I do not mind, except that we have had the bill before us for sometime, there has been considerable study, and I should like to dispose of it at this session.

Mr. McFARLAND. I desire to cooperate, but I believe we passed a bill in regard to the Communications Act. I regret that I have not had an opportunity to study the bill.

The PRESIDENT pro tempore. Objection is heard.

Mr. McCARRAN. Does the Senator object to having the bill placed at the foot of the calendar?

Mr. McFARLAND. I do not think we have had sufficient time. I shall probably have an opportunity to consider it the first of next week.

The PRESIDENT pro tempore. The bill will be passed over.

Mr. McFARLAND subsequently said:

Mr. President, I ask unanimous consent to revert to calendar 2618, House bill 5487, to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended. I withdraw the objection I made with reference to that bill.

The PRESIDENT pro tempore. Is there objection to the consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, which had been reported from the Committee on the Judiciary with amendments on page 2, line 12, after the word "Board", to insert "or the Maritime Administration"; in line 14, after the word "Commission", to strike out "or Board" and insert "Board, or Administration"; on page 3, line 5, after the word "Board", to insert "or

the Maritime Administration"; on page 6, after line 19, to strike out:

SCOPE OF REVIEW

(d) The findings of the agency as to the facts, if supported by substantial evidence, shall be conclusive. No objection to the order of the agency shall be considered by the court unless such objection shall have been urged before the agency or unless there were reasonable grounds for failure to do so.

And on page 11, line 8, after the word "Agriculture", to insert "or the United States Maritime Commission, the Federal Maritime Board, and the Maritime Administration."

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended so as to read: "An act to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended."

EDWIN A. KNOUS

The bill (S. 3897) for the relief of Edwin A. Knous was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Edwin A. Knous, of Ruth, Nev., the sum of \$84.25, in full satisfaction of his claim against the United States for travel allowance and subsistence due for traveling on orders dated April 16, 1943, from San Francisco, Calif., to Miami, Fla., while a seaman, second class, in the United States Navy: *Provided,* That no part of the amount appropriated in this act in excess of 10 percent thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

EXTENSION OF BENEFITS TO CERTAIN PERSONS IN MILITARY, NAVAL, OR AIR SERVICE

The bill (S. 4229) to extend to certain persons who served in the military, naval, or air service on or after June 25, 1950, the benefits of Public Law No. 16 Seventy-eighth Congress, as amended, was announced as next in order.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. HENDRICKSON. Reserving the right to object, this is important legislation, and I think the RECORD should show exactly what the bill would do. I request an explanation.

The PRESIDENT pro tempore. Will the Senator in charge of the bill explain it?

Mr. McCARRAN. Mr. President, this is not one of my bills.

Mr. HENDRICKSON. Mr. President, I ask that the bill go to the foot of the calendar.

The PRESIDENT pro tempore. Without objection, the bill will be placed at the foot of the calendar.

Mr. HENDRICKSON subsequently said: Mr. President, I ask unanimous consent to return to Calendar 2621, Senate bill 4229, to extend to certain persons who served in the military, naval, or air service on or after June 25, 1950, the benefits of Public Law 16, Seventy-eighth Congress, as amended.

Mr. AIKEN. Mr. President, an explanation of the bill was requested a few minutes ago, and then the bill was passed over temporarily.

The bill was sponsored by all the members of the Committee on Labor and Public Welfare, plus the Senator from New York [Mr. Ives]. It simply extends the benefits of the Vocational Rehabilitation Act to veterans serving in the Korean War to the same extent as they are applicable to veterans of World War II.

The PRESIDENT pro tempore. Is there objection to consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (S. 4229) to extend to certain persons who served in the military, naval, or air service on or after June 25, 1950, the benefits of Public Law No. 16, Seventy-Eighth Congress, as amended, which had been reported from the Committee on Labor and Public Welfare, with amendments on page 1, line 4, after the word "June", to strike out "25" and insert "27"; on page 2, line 11, after the word "June", to strike out "25" and insert "27", and on page 3, line 3, after the word "of", to strike out "the United States" and insert "a State, Territory, or possession of the United States or of the District of Columbia", so as to make the bill read:

Be it enacted, etc., That service in the active military, naval, or air service of the United States on or after June 27, 1950, and prior to such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress, shall afford basic entitlement to vocational rehabilitation under Public Law No. 16, Seventy-eighth Congress, as amended, needed to overcome the handicap of a disability, incurred in or aggravated by such service for which compensation is payable under the provisions of subparagraph I (c), part II, Veterans Regulation No. 1 (a), as amended (or would be but for receipt of retirement pay), subject to the applicable provisions, conditions, and limitations of Public Law No. 16, Seventy-eighth Congress, as amended, except as follows:

(1) Vocational rehabilitation based on service as prescribed in this act may be afforded within 9 years after the aforesaid termination of the period beginning June 27, 1950.

(2) Notwithstanding the fact that vocational rehabilitation may have been previously afforded under Public Law No. 16, as amended, or that education or training may have been afforded under title II of the Servicemen's Readjustment Act of 1944, as amended, additional vocational rehabilita-

SEC. 15. New birth record upon marriage of natural parents: Whenever a certified copy of a marriage certificate is submitted to the Health Officer of the District of Columbia establishing that the previously unwed parents of an illegitimate child have intermarried subsequent to the birth of said child and paternity of the child has been judicially determined or acknowledged by the husband before the Health Officer of the District of Columbia, a new certificate of birth, bearing the original date of birth and the names of both parents, shall be issued and substituted for the certificate of birth then on file. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal, and opened for inspection only upon order of the United States District Court for the District of Columbia.

SEC. 16. (a) Reports to Bureau of Vital Statistics: Upon entry of a final judgment determining the paternity of a child born out of wedlock, the clerk of the court shall forward a certificate to the bureau of vital statistics of the jurisdiction in which the child was born, giving the name of the person adjudged to be the father of said child.

(b) Upon receipt of the certificate as provided in section 16 (a) hereof, the Health Officer of the District of Columbia shall file said certificate with the original birth record, and thereafter may issue a certificate of birth registration including thereon the name of the person adjudged to be the father of said child.

SEC. 17. Records: None of the records or proceedings in any case arising under this act shall be open to inspection by anyone other than defendant or counsel of record except upon order of the court. The court upon proper showing may, in its discretion, authorize the clerk to furnish certified copies of any such records or portions thereof to the defendant, the mother, or custodian of the child, any party in interest, or their duly authorized attorneys, and the clerk is hereby authorized to furnish certified copies of such records or portions thereof upon request to the United States attorney for the District of Columbia for use as evidence in nonsupport proceedings as provided in section 13 of this act.

SEC. 18. Construction of statute; appropriations: This act shall be so interpreted as to effectuate the protection and welfare of the child involved in any proceedings hereunder, and appropriations to carry out the purposes of this act are hereby authorized.

SEC. 19. Constitutionality: If any section, subdivision, or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act.

With the following committee amendments:

Page 3, line 4, following the word "counsel", strike remainder of line 4, lines 5, 6, and that portion of line 7 ending with the word "truth" and insert in lieu thereof "to determine the validity."

Page 3, line 9, following the word "believe", strike remainder of line 9, through to the word "that" in line 14.

Page 3, line 14, following the word "father", insert "of the child in question."

Page 3, line 15, strike the word "thereof."

Page 3, lines 15 and 16, strike the words "by such officer."

Page 3, line 24, following the word "necessary", insert "by the court."

Page 4, lines 13 and 14, strike the words "Washington Asylum" and insert the word "District."

Page 5, line 4, following the word "court", strike the word "shall" and substitute the word "may."

Page 5, line 5, following the word "public", insert the following: ", and shall do so."

Page 5, line 15, following the word "court", strike the word "shall" and substitute the word "may."

Page 5, lines 15 and 16, strike the words "the payment of annual amounts, equal or varying" and substitute the word "payments."

Page 5, line 21, strike the word "the" and insert "a."

Page 5, line 21, strike the words "wherein he resides through."

Page 5, line 21, before the word "the" insert the word "of."

Page 6, lines 2 and 3, strike the following: "upon petition of any party in interest."

On page 6, line 5, following the word "child", strike the period and the words "hearing on such petition" and substitute a semicolon and the following: "Provided, however, That a hearing."

Page 6, line 8, add "s" to the word "place" to give it a plural meaning.

Page 6, line 16, strike the word "may" and insert the word "shall."

Page 6, line 21, following the word "of", insert the word "any."

Page 6, line 22, following the word "may", insert the words "revoke probation and."

Page 6, line 23, following the word "year", insert "at any one time."

Page 6, line 23, after the word "of", strike the word "the" and insert "a."

Page 7, line 1, following the word "judgment", insert the following: "or for commitment for further default."

Page 7, line 3, strike the words "suspend sentence and" and substitute "set aside commitment and again."

Page 7, line 4, before the word "place", insert the word "again."

Page 7, line 15, strike the word "for."

Page 7, line 15, strike the word "provided", and substitute the word "ordered."

Page 8, line 3, strike the words "at any time."

Page 8, line 4, strike the word "when", and substitute the words "if and when."

Page 8, line 6, strike the word "the" and insert in lieu thereof "and."

Page 8, line 21, following the word "at", strike the words "the precinct wherein he resides through the" and insert "a precinct of the."

Page 9, line 11, following the word "to", strike the following: "approve voluntary agreements", and insert in lieu the following: "accept voluntary payments."

Page 9, lines 12 and 13, strike the following: "and to accept payments made pursuant thereto."

Page 9, line 13, following the word "disburse", insert the word "to."

Page 11, line 12, following the word "attorneys", strike the comma and insert in lieu thereof a period.

Page 11, line 12, strike the words "and the" and insert in lieu the word "The."

Page 11, line 16, strike the period following the word "act" and insert a comma and add the following: "and to the Bureau of Vital Statistics as principal in section 16 (a) hereof."

The committee amendments were agreed to.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EXTENSION OF REMARKS

Mr. CHATHAM, (at the request of Mr. RICHARDS) was given permission to extend his remarks and include an article on China.

Mr. DINGELL (at the request of Mr. McCORMACK) was given permission to extend his remarks and include an article.

Mr. EVINS asked and was given permission to revise and extend his remarks with respect to the bill H. R. 9911.

Mr. SMITH of Wisconsin asked and was given permission to extend his remarks in the RECORD in two instances and include extraneous matter.

Mr. MILLER of California asked and was given permission to extend his remarks in the RECORD in two instances and include extraneous matter.

Mr. JAVITS asked and was given permission to extend his remarks in the RECORD in four instances and include extraneous matter.

Mr. CANFIELD asked and was given permission to extend his remarks in the RECORD and include an editorial.

REVIEW OF ORDERS OF FEDERAL COMMUNICATIONS COMMISSION

Mr. HOBBS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, together with Senate amendments, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, line 12, after Board", insert "or the Maritime Administration."

Page 2, line 13, strike out "or Board," and insert "Board, or Administration."

Page 3, line 3, after "Board", insert "or the Maritime Administration."

Page 6, strike out all after line 20 over to and including line 3 on page 7.

Page 11, line 10, after "Agriculture", insert "or the United States Maritime Commission, the Federal Maritime Board, and the Maritime Administration."

Amend the title so as to read: "An act to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended."

The SPEAKER. Is there objection to the request of the gentleman from Alabama [Mr. HOBBS]?

There was no objection.

The Senate amendments were agreed to.

A motion to reconsider was laid on the table.

SPECIAL ORDER GRANTED

Mr. MILLER of California asked and was given permission to address the House on tomorrow for 10 minutes, following the legislative business of the day.

and any other special orders heretofore entered.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. WAGNER (at the request of Mr. YOUNG), for an indefinite period, on account of illness.

To Mr. HELLER (at the request of Mr. BYRNE of New York), for an indefinite period, on account of official business.

SENATE BILLS AND CONCURRENT RESOLUTION REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 12. An act to amend the Civil Aeronautics Act of 1938, as amended; to the Committee on Interstate and Foreign Commerce.

S. 560. An act for the relief of Wilhelm Engelbert; to the Committee on the Judiciary.

S. 735. An act for the relief of Leslie A. Connell; to the Committee on the Judiciary.

S. 1113. An act to provide for the appointment of conservators to conserve the assets of persons of advanced age, mental weakness, not amounting to unsoundness of mind, or physical capacity; to the Committee on the District of Columbia.

S. 2460. An act for the relief of George O. Drucker, Livia Drucker, and their minor daughter, Gloria Elizabeth Drucker; to the Committee on the Judiciary.

S. 2830. An act for the relief of E. C. Browder and Charles Keyton; to the Committee on the Judiciary.

S. 2888. An act for the relief of Frances Ethel Beddington; to the Committee on the Judiciary.

S. 2921. An act for the relief of Stavros S. Niarchos; to the Committee on the Judiciary.

S. 3044. An act for the relief of Bernice Josephine Lazaga; to the Committee on the Judiciary.

S. 3125. An act for the relief of Dr. Lutfu Lahut Uzman; to the Committee on the Judiciary.

S. 3241. An act for the relief of George Brander Palohelmo and Eva Lencra Palohelmo; to the Committee on the Judiciary.

S. 3259. An act for the relief of Ethelyn Isobel Chenalloy; to the Committee on the Judiciary.

S. 3260. An act for the relief of Richard H. Lush; to the Committee on the Judiciary.

S. 3267. An act for the relief of Willard Sidmer Ruttan; to the Committee on the Judiciary.

S. 3378. An act for the relief of Armando Santini; to the Committee on the Judiciary.

S. 3513. An act for the relief of James Shellenberger, Jr., a minor; to the Committee on the Judiciary.

S. 3554. An act for the relief of Jose Manzano Scmera; to the Committee on the Judiciary.

S. 3682. An act to amend the Civil Service Retirement Act of May 29, 1930, as amended, with respect to the time of taking effect of annuities of Members and elected officers of the Senate and House of Representatives; to the Committee on Post Offices and Civil Service.

S. 3699. An act for the relief of Linda Leo; to the Committee on the Judiciary.

S. 3725. An act for the relief of James McGillic and Blossom McGillic; to the Committee on the Judiciary.

S. 3897. An act for the relief of Edwin A. Knous; to the Committee on the Judiciary.

S. 4069. An act for the relief of Edulji Dinshaw and his sister, Mrs. Bachoo Dinsha Woronzow; to the Committee on the Judiciary.

S. 4110. An act for the relief of Howard Lovell; to the Committee on the Judiciary.

S. 4133. An act for the relief of Dr. Fernand Van Den Branden; to the Committee on the Judiciary.

S. 4235. An act to authorize the transfer to the Vermont Agricultural College of certain lands in Addison County, Vt., for agricultural purposes; to the Committee on Agriculture.

S. 4241. An act to amend the act incorporating the American Legion so as to redefine (a) the powers of said corporation, (b) the right to the use of the name "The American Legion" and "American Legion"; to the Committee on the Judiciary.

S. Con. Res. 108. Concurrent resolution favoring the suspension of deportation of certain aliens; to the Committee on the Judiciary.

ADJOURNMENT

Mr. COOPER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 59 minutes p. m.) the House adjourned until tomorrow, Tuesday, December 19, 1950, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1787. A letter from the Acting Secretary, Department of Agriculture, transmitting a draft of a proposed joint resolution entitled "Joint resolution relating to peanut acreage allotments under the Agricultural Adjustment Act of 1938, as amended"; to the Committee on Agriculture.

1788. A letter from the Secretary of Defense, transmitting a report relative to adjustments made by the Department of the Air Force, with the approval of the President and the Secretary of Defense, making certain adjustments between appropriations to improve the administration of appropriated funds available to the Department of the Air Force, pursuant to section 403 of the National Security Act, as amended; to the Committee on Armed Services.

1789. A letter from the Assistant Secretary of Defense, transmitting a draft of a proposed bill entitled "A bill to make certain revisions in titles I through IV of the Officer Personnel Act of 1947, as amended, and for other purposes"; to the Committee on Armed Services.

1790. A letter from the Acting Attorney General, transmitting copies of the orders of the Commissioner of the Immigration and Naturalization Service granting the application for permanent residence filed by the subjects of such orders, pursuant to section 4 of the Displaced Persons Act of 1948, as amended; to the Committee on the Judiciary.

1791. A letter from the Acting Attorney General, transmitting copies of the orders of the Commissioner of the Immigration and Naturalization Service suspending deportation as well as a list of the persons involved, pursuant to the act of Congress approved July 1, 1948 (Public Law No. 863), amending subsection (c) of section 19 of the Immigration Act of February 5, 1917, as amended (8 U. S. C. 155 (c)); to the Committee on the Judiciary.

1792. A letter from the chairman, Reconstruction Finance Corporation, transmitting a draft of a proposed bill entitled "A bill to amend chapter 26 of the Internal Revenue Code"; to the Committee on Ways and Means.

1793. A letter from the Assistant Secretary of Defense, transmitting a draft of a proposed bill entitled "A bill to amend the Internal Revenue Code in order to allow extension of time for the filing of returns and the payment of income taxes by certain persons serving in zones of combat between January 1, 1951, and March 15, 1951, and for other purposes"; to the Committee on Ways and Means.

1794. A letter from the Archivist of the United States, transmitting a report of lists or schedules covering records proposed for disposal by various Government agencies; to the Committee on House Administration.

1795. A letter from the Secretary of the Army, transmitting a letter from the Chief of Engineers, United States Army, dated December 5, 1950, submitting a report, together with accompanying papers, on a review of reports on Sandwich Harbor, Mass., requested by a resolution of the Committee on Rivers and Harbors, House of Representatives, adopted on August 19, 1946; to the Committee on Public Works.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. KING: Committee on Ways and Means. H. R. 3229. A bill to amend the Internal Revenue Code, as amended, and the Federal Alcohol Administration Act, as amended; with amendment (Rept. No. 3206). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BYRNE of New York: Committee of conference. H. R. 5244. A bill for the relief of Charles J. Trees; with amendment (Rept. No. 2205). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DOLLIVER:

H. R. 9928. A bill to amend the public Health Service Act to authorize assistance to States and political subdivisions in the development and maintenance of local public health units, particularly in national defense areas, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. KEATING:

H. R. 9929. A bill to authorize acquisition and interception of communications in interest of national security and defense; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. JONES of Alabama:

H. R. 9930. A bill authorizing the Secretary of the Interior to issue to Jake Alexander a patent in fee to certain lands in the State of Alabama; to the Committee on Public Lands.

By Mr. LECOMPTE:

H. R. 9931. A bill for the relief of the Old King Coal Co.; to the Committee on the Judiciary.

[PUBLIC LAW 901—81ST CONGRESS]

[CHAPTER 1189—2D SESSION]

[H. R. 5487]

AN ACT

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. As used in this Act—

(a) "Court of appeals" means a court of appeals of the United States.

(b) "Clerk" means the clerk of the court in which the petition for the review of an order, reviewable under this Act, is filed.

(c) "Petitioner" means the party or parties by whom a petition to review an order, reviewable under this Act, is filed.

(d) When the order sought to be reviewed was entered by the Federal Communications Commission, "agency" means the Commission; when such order was entered by the Secretary of Agriculture, "agency" means the Secretary; when such order was entered by the United States Maritime Commission, or the Federal Maritime Board, or the Maritime Administration, "agency" means that Commission or Board, or Administration, as the case may require.

JURISDICTION

SEC. 2. The court of appeals shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of, all final orders (a) of the Federal Communications Commission made reviewable in accordance with the provisions of section 402 (a) of the Communications Act of 1934, as amended, and (b) of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and under the Perishable Agricultural Commodities Act, 1930, as amended, except orders issued under sections 309 (e) and 317 of the Packers and Stockyards Act and section 7 (a) of the Perishable Agricultural Commodities Act, and (c) such final orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration entered under authority of the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, as are now subject to judicial review pursuant to the provisions of section 31, Shipping Act, 1916, as amended.

Such jurisdiction shall be invoked by the filing of a petition as provided in section 4 hereof.

VENUE

SEC. 3. The venue of any proceeding under this Act shall be in the judicial circuit wherein is the residence of the party or any of the parties filing the petition for review, or wherein such party or any of such parties has its principal office, or in the United States Court of Appeals for the District of Columbia.

REVIEW OF ORDERS

SEC. 4. Any party aggrieved by a final order reviewable under this Act may, within sixty days after entry of such order, file in the court of appeals, wherein the venue as prescribed by section 3 hereof lies, a petition to review such order. Upon the entry of such an order, notice thereof shall be given promptly by the agency by service or publication in accordance with the rules of such agency. The action in court shall be brought against the United States. The petition shall contain a concise statement of (a) the nature of the proceedings as to which review is sought, (b) the facts upon which venue is based, (c) the grounds on which relief is sought, and (d) the relief prayed. The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition upon the agency and upon the Attorney General of the United States by mailing by registered mail, with request for return receipt, a true copy to the agency and a true copy to the Attorney General.

PREHEARING CONFERENCE

SEC. 5. The court of appeals may hold a prehearing conference or direct a judge of such court to hold a prehearing conference.

RECORD TO BE CERTIFIED

SEC. 6. Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review, duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing.

PETITIONS HEARD ON RECORD BEFORE RESPONDENT

SEC. 7. (a) Petitions to review orders reviewable under this Act, unless determined on a motion to dismiss the petition, shall be heard in the court of appeals upon the record of the pleadings, evidence adduced, and proceedings before the agency where the agency has in fact held a hearing whether or not required to do so by law.

PROCEDURE WHERE NO HEARING HELD

(b) Where the agency has held no hearing prior to the taking of the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After

such determination, the court shall (1) where a hearing is required by law, remand the proceedings to the agency for the purpose of holding a hearing; (2) where a hearing is not required by law, pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; and (3) where a hearing is not required by law, and a genuine issue of material fact is presented, transfer the proceedings to a United States district court for the district where the petitioner or any petitioner resides or has its principal office for hearing and determination as if such proceedings were originally initiated in the district court. The procedure in such cases in the United States district courts shall be governed by the Federal Rules of Civil Procedure.

ADDITIONAL EVIDENCE

(c) If a party to a proceeding to review shall apply to the court of appeals, in which the proceeding is pending, for leave to adduce additional evidence and shall show to the satisfaction of such court (1) that such additional evidence is material, and (2) that there were reasonable grounds for failure to adduce such evidence before the agency, such court may order such additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file a certified transcript of such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order.

REPRESENTATION IN PROCEEDING—INTERVENTION

SEC. 8. The Attorney General shall be responsible for and have charge and control of the interests of the Government in all court proceedings authorized by this Act. The agency, and any party or parties in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the agency's order, may intervene in any proceeding to review such order. The Attorney General shall not dispose of or discontinue said proceeding to review over the objection of such party or intervenors aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said proceeding unaffected by the action or nonaction of the Attorney General therein.

JURISDICTION OF PROCEEDING

SEC. 9. (a) Upon the filing and service of a petition to review, the court of appeals shall have jurisdiction of the proceeding. The court of appeals in which the record on review is filed, on such filing, shall have jurisdiction to vacate stay orders or interlocutory injunctions theretofore granted by any court, and shall have exclusive jurisdiction to make and enter, upon the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of,

and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY INJUNCTIONS

(b) The filing of the petition to review shall not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. Where the petitioner makes application for an interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this Act, at least five days' notice of the hearing thereon shall be given to the agency and to the Attorney General of the United States. In cases where irreparable damage would otherwise ensue to the petitioner, the court of appeals may, on hearing, after not less than five days' notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than sixty days from the date of such order pending the hearing on the application for such interlocutory injunction, in which case such order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that such irreparable damage would result to petitioner and specifying the nature of such damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, upon a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

The hearing upon such an application for an interlocutory injunction shall be given preference and expedited and shall be heard at the earliest practicable date after the expiration of the notice of hearing on the application provided for above.

Upon the final hearing of any proceeding to review any order under this Act, the same requirements as to precedence and expedition shall apply.

REVIEW IN THE SUPREME COURT ON CERTIORARI OR CERTIFICATION

SEC. 10. An order granting or denying an interlocutory injunction under section 9 (b) of this Act shall be subject to review by the Supreme Court of the United States upon writ of certiorari as provided in title 28, United States Code, section 1254 (1) : *Provided*, That application therefor be duly made within forty-five days after the entry of such order. The final judgment of the court of appeals in a proceeding to review under this Act shall be subject to review by the Supreme Court of the United States upon a writ of certiorari in accordance with the provisions of title 28, United States Code, section 1254 (1) : *Provided further*, That application therefor be duly made within ninety days after the entry of such judgment. Either the United States or the agency or an aggrieved party may file such petition for a writ of certiorari. The provisions of title 28, United States Code, section 1254 (3), regarding certification, and of title 28, United States Code, section 2101 (e), regarding stays, shall also apply to proceedings under this Act.

RULES

SEC. 11. The several courts of appeals shall adopt and promulgate rules governing the practice and procedure, including prehearing conference procedure, in proceedings to review orders under this Act: *Provided, however,* That such rules shall be approved by the Judicial Conference of the United States.

ENFORCEMENT

SEC. 12. The several United States district courts are hereby vested with jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order heretofore or hereafter issued under section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 161).

REPEALS

SEC. 13. All laws or parts of laws inconsistent with the provisions of this Act are repealed.

EFFECTIVE DATE

SEC. 14. This Act shall take effect on the thirtieth day after the date of its approval. However, actions to enjoin, set aside, or suspend orders of the Federal Communications Commission or the Secretary of Agriculture, or the United States Maritime Commission, the Federal Maritime Board, and the Maritime Administration which are pending when this Act becomes effective, shall not be affected thereby, but shall proceed to final disposition under the existing law.

Approved December 29, 1950.

